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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1913

No. [illegible] 43

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R. H. DOWNMAN, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF TEXAS.

---

ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

---

FILED JUNE 17, 1911.

(22,741)

# (22,741)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1912.

## No. 332.

R. H. DOWNMAN, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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a

*Caption.*

Be it remembered that at a term of the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas, at the City of Austin, Texas, beginning on the First Monday in October, 1910, and which will end by operation of law on the first Monday in July, 1911, the following, among other, proceedings were had, towit:

No. 4613.

THE STATE OF TEXAS, Appellant,
vs.
R. H. DOWNMAN, Appellee.

Appeal from Llano County.

WEDNESDAY, *January* 18*th*, 1911.

Judgment reversed and rendered for Appellant.

1

*Caption.*

THE STATE OF TEXAS,
*County of Llano:*

At a term of the District Court, begun and holden at Llano, Texas, within and for the County of Llano, before the Hon. Clarence Martin, and ending on the 22nd Day of May, A. D., 1909, the following case came on for trial, towit:

THE STATE OF TEXAS, Plaintiff,
vs.
R. H. DOWNMAN, Defendant.

*Plaintiff's Original Petition.*

Filed March 6th, 1909.

List or Schedule.

EXHIBIT "A."

Attached to Petition for Foreclosure on Delinquent Taxes

(Acts of 1897)

From Delinquent Tax Record of Llano County, Texas.

*Report of Lands and Town Lots Assessed on the Tax Rolls of Llano County, Texas, for the year* **1907**, *Which are Delinquent for Taxes of* 1907 *Only, Returned by W. C. Wallace, Tax Collector.*

Mineral Rights Only.

| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Land, original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| R. H. Downman..... | 175 | ... | ... | C. R. Deidrich..... | 320 | 320 |
| " " " ..... | 174 | ... | 604 | " " " ..... | 320 | 320 |
| " " " ..... | 251 | ... | 113 | M. F. Funk..... | 320 | 320 |
| " " " ..... | 252 | 482 | 114 | " " " ..... | 320 | 320 |
| " " " ..... | 397 | 3/464 | 3 | H. & G. N. R. R. Co..... | 640 | 640 |
| " " " ..... | 972 | ... | 108 | J. M. Lewis..... | 20 | 20 |
| " " " ..... | 50 | 493 | 115 | H. Brocker..... | 320 | 320 |
| " " " ..... | 51 | 493 | 116 | " " ..... | 320 | 320 |
| ..... | 907 | ... | ... | J. C. Joy..... | 160 | 160 |

PAGE BOUND VE

| | | | | |
|---|---|---|---|---|
| " " " | ..... | 883 | 26/16 | ... |
| " " " | ..... | 816 | ... | ... |
| " " " | ..... | 279 | ... | 477 |
| " " " | ..... | 299 | ... | 477 |
| " " " | ..... | 279 | ... | 477 |
| " " " | ..... | 279 | ... | 477 |
| " " " | ..... | 708 | 34 | 222 |
| " " " | ..... | 707 | 34 | 223 |
| " " " | ..... | 1358 | ... | 68 |
| " " " | ..... | 1508 | 1/400 | 4 |
| " " " | ..... | 1398 | 1/410 | 4 |
| " " " | ..... | 697 | 849 | 317 |
| " " " | ..... | 696 | 849 | 316 |
| " " " | ..... | 401 | 31/468 | 15 |
| " " " | ..... | 401 | 2/467 | 13 |
| " " " | ..... | 27 | ... | 19 |
| " " " | ..... | 957 | ... | ... |
| " " " | ..... | 1124 | ... | 24 |
| " " " | ..... | 1196 | ... | 4 |
| " " " | ..... | 899 | ... | 6 |

2

| | | | | |
|---|---|---|---|---|
| R. H. Downman..... | | 967 | ... | ... |
| " " " | ..... | 922 | ... | ... |
| " " " | ..... | 249 | 167 | 184 |
| " " " | ..... | 250 | 167 | 132 |
| " " " | ..... | 815 | 296 | 92 |
| " " " | ..... | 1122 | ... | ... |
| " " " | ..... | 1847 | ... | 888 |
| " " " | ..... | 854 | 507 | 51 |

| | | |
|---|---|---|
| J. M. Bourland..... | 48 | 48 |
| H. Voight..... | 320 | 320 |
| E. Garcia..... | 175 | 175 |
| " " ..... | 250 | 250 |
| " " ..... | 50 | 50 |
| L. Sailor..... | 745 | 745 |
| " " ..... | 168 | 168 |
| W. R. Allen..... | 10 | 10 |
| J. Poitevant..... | 112 | 112 |
| Wallace Fade..... | 160 | 160 |
| A. Schenk..... | 160 | 160 |
| " " ..... | 320 | 320 |
| H. & G. N. R. R. Co..... | 320 | 320 |
| " " " " " " " ..... | 640 | 640 |
| Wm. Aburnbeck..... | 640 | 640 |
| J. B. Eaker..... | 320 | 320 |
| H. Bauman..... | 160 | 160 |
| " " ..... | 160 | 160 |
| J. W. Harris..... | 640 | 640 |
| | 160 | 160 |
| N. Joiner..... | 160 | 160 |
| F. M. Ryme..... | 160 | 160 |
| Fisher & Miller..... | 268 | 268 |
| " " " ..... | 307 | 307 |
| A. Voight..... | 320 | 320 |
| R. Bauman..... | 160 | 160 |
| M. L. Bauman..... | 96 3/5 | 96 3/5 |
| F. W. Rede..... | 80 | 80 |

TICAL IN BOOK

| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Land, original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| " " " ..... | 1424 | ... | 17 | M. A. L. Bauman..... | 160 | 160 |
| " " " ..... | 1423 | ... | 16 | " " " " ..... | 160 | 160 |
| " " " ..... | 200 | 899 | 98 | L. Estrop..... | 320 | 320 |
| " " " ..... | 199 | 899 | 97 | " " ..... | 320 | 320 |
| " " " ..... | 1026 | 1388 | 3 | H. Bauman..... | 640 | 640 |
| " " " ..... | 1460 | 1328 | 3 | W. D. Wright..... | 35 | 35 |
| " " " ..... | 769 | 64 | 1 | S. F. I. W. Co..... | 160 | 160 |
| " " " ..... | 578 | ... | 16 | D. F. Owen..... | 144 | 144 |
| " " " ..... | 293 | 297 | 93 | A. Strauss..... | 320 | 320 |
| " " " ..... | 727 | 992 | 253 | F. Schenck..... | 79 3/4 | 79 3/4 |
| " " " ..... | 260 | 506 | 86 | C. Fix..... | 320 | 320 |
| " " " ..... | 261 | 506 | 85 | " " ..... | 320 | 320 |
| " " " ..... | 807 | 541 | 601 | E. Viekering..... | 160 | 160 |
| " " " ..... | 1361 | 21/328 | 4 | M. E. Buchannan..... | 160 | 160 |
| " " " ..... | 1156 | ... | 6 | H. W. Harris..... | 160 | 160 |
| " " " ..... | 1355 | ... | .. | G. W. Meredith..... | 160 | 160 |
| " " " ..... | 1284 | ... | 4 | H W. Harris..... | 480 | 480 |
| " " " ..... | 15 | 29/302 | ... | H. Anderson..... | 118 | 118 |
| " " " ..... | 197 | 688 | 600 | W. C. Eschenbauer..... | 640 | 640 |
| " " " ..... | 836 | 687 | 553 | Jacob Williams..... | 640 | 640 |
| " " " ..... | 1141 | 311/226 | 2 | J. A. Evans..... | 148 | 148 |
| " " " ..... | 1275 | 21/326 | ... | Jeff Dillard..... | 151 | 151 |
| " " " ..... | 1288 | 21/326 | 2 | B. H. Jernigan..... | 150 | 150 |
| " " " ..... | 1289 | 21/326 | 2 | " " " ..... | 152 | 152 |
| " " " ..... | 1287 | ... | ... | C. R. Johns..... | 160 | 160 |
| " " " ..... | 1232 | ... | ... | P. Parker..... | 48 | 48 |
| " " " ..... | 1358 | ... | 68 | W. R. Allen..... | 77 1/2 | 77 1/2 |
| " " " ..... | 813 | ... | 223 | F. Voight..... | 320 | 320 |

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| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| " " | " | ..... | 1270 | 1/400 | ... | F. M. Courtney | 160 | | 160 |
| " " | " | ..... | 638 | ... | 225 | M. Reston | 320 | | 320 |
| " " | " | ..... | 887 | ... | 321 | L. Castanon | 213 | 1/2 | 213 1/2 |
| " " | " | ..... | 814 | ... | 232 | F. Voight | 20 | | 20 |
| " " | " | ..... | 1086 | 3/461 | 40 | J. L. Kirkpatrick | 160 | | 160 |
| " " | " | ..... | 75 | ... | 185 | E. Brune | 160 | | 160 |
| " " | " | ..... | 958 | 3/463 | 8 | C. L. Epperson | 160 | | 160 |
| " " | " | ..... | 1276 | 3/463 | 8 | " " " | 178 | | 178 |
| " " | " | ..... | 1547 | ... | A3 | " " " | 23 | 1/2 | 23 1/2 |
| " " | " | ..... | 1116 | ... | ... | J. M. Williams | 160 | | 160 |
| " " | " | ..... | 1090 | ... | ... | E. V. Lurly | 160 | | 160 |
| " " | " | ..... | 1253 | 3/463 | 8 | I. Guess | 335 | | 335 |
| " " | " | ..... | 396 | 3/463 | 7 | H. & G. N. R. R. Co. | 640 | | 640 |
| " " | " | ..... | 308 | ... | 129 | Ger. Emg. Co. | 238 | | 238 |
| " " | " | ..... | 729 | ... | ... | F. Schenk | 259 | | 259 |
| " " | " | ..... | 250 | ... | 132 | Fisher & Miller | 2 | 1/2 | 2 1/2 |
| " " | " | ..... | 1079 | ... | 54 | W. A. Hall | 160 | | 160 |
| " " | " | ..... | 971 | ... | ... | J. F. Lively | 160 | | 160 |
| " " | " | ..... | 608 | ... | ... | F. Pankey | 160 | | 160 |
| " " | " | ..... | 661 | ... | 14 | Wm. Rainbolt | 160 | | 160 |
| " " | " | ..... | 707 | ... | 223 | L. Sailor | 309 | | 309 |
| " " | " | ..... | 708 | ... | 222 | " " | 149 | 1/2 | 149 1/2 |
| " " | " | ..... | 14 | ... | 56 | Otto Amberg | 216 | | 216 |
| " " | " | ..... | 45 | ... | 354 | H. R. Berberstein | 160 | | 160 |
| " " | " | ..... | 1114 | ... | 12 | N. E. Tubb | 160 | | 160 |
| " " | " | ..... | 1219 | ... | ... | J. J. Kuykendall | 160 | | 160 |
| " " | " | ..... | 789 | ... | 563 | E. Thrigg | 93 | 1/3 | 93 1/3 |
| " " | " | ..... | 853 | 697 | 214 | Jno. Watt | 160 | | 160 |
| | | ..... | 243 | 190 | 187 | Fisher & Miller | 320 | | 320 |



D VERTICAL IN BOOK

| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Land, original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| " " " ..... | 991 | ... | ... | W. H. New ..... | 160 | 160 |
| " " " ..... | 307 | 5 | 133 | Ger. Emg. Co. ..... | 320 | 320 |
| 3 | | | | | | |
| R. H. Downman ..... | 1152 | 8 | 23 | H. W. Harris ..... | 320 | 320 |
| " " " ..... | 1251 | 11/79 | ... | J. George ..... | 182 | 182 |
| " " " ..... | 1126 | ... | 20 | J. S. Bourland ..... | 64 | 64 |
| " " " ..... | 272 | 309 | 55 | Wm. Frederick ..... | 320 | 320 |
| " " " ..... | 645 | 399 | 315 | Ed Ricks ..... | 160 | 160 |
| " " " ..... | 249 | 167 | 184 | Fisher & Miller ..... | 33 | 33 |
| " " " ..... | 250 | 168 | 132 | " " " ..... | 10 | 5 |
| " " " ..... | 1290 | ... | 15 | Mrs. F. King ..... | 91 3/10 | 91 3/10 |
| " " " ..... | 351 | 492 | 87 | C. Heise ..... | 43 | 43 |
| " " " ..... | 1149 | 3 | 4 | W. F. Gray ..... | 163 | 163 |
| " " " ..... | 858 | 790 | 128 | Geo. Weenhamer ..... | 163 | 163 |
| " " " ..... | 736 | 29/10 | 729 | C. Sybuler ..... | 163 | 163 |
| " " " ..... | 794 | 3 | 3 | J. F. Torry ..... | 163 | 163 |
| " " " ..... | 1491 | 963 | 4 | W. F. Gray ..... | 199 | 199 |
| " " " ..... | 1438 | 16 | 83 | J. V. Massey ..... | 140 | 140 |
| " " " ..... | 1491 | 936 | 4 | W. F. Gray ..... | 22 | 22 |
| " " " ..... | 351 | 492 | 87 | G. Heise ..... | 576 | 576 |
| " " " ..... | 239 | 133 | 134 | Fisher & Miller ..... | 480 | 480 |
| " " " ..... | 14 | 898 | 56 | Otto Amberg ..... | 75 | 75 |
| " " " ..... | 672 | ... | 602 | J. A. Schuster ..... | 320 | 320 |
| " " " ..... | 673 | ... | 603 | " " " ..... | 320 | 320 |
| " " " ..... | 884 | ... | 32 | Peter Bader ..... | 160 | 160 |
| ..... | 960 | .. | ... | Garza Emg. & Mfg. Co. ..... | 480 | 480 |

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| | | |

| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Land, original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| " " " ..... | 1033 | 23/93 | 1 | I. & G. N. R. R. Co..... | 80 | 80 |
| " " " ..... | 1030 | ... | ... | Aug. Grenwelge..... | 320 | 320 |
| " " " ..... | 697 | 678 | 324 | E. Schmidt..... | 160 | 160 |
| " " " ..... | 680 | 678 | 325 | " " ..... | 160 | 160 |
| " " " ..... | 681 | 678 | 326 | " " ..... | 160 | 160 |
| " " " ..... | 682 | 678 | 327 | " " ..... | 160 | 160 |
| " " " ..... | 802 | 31/244 | 21 | T. & N. O. R. R. Co..... | 640 | 640 |
| " " " ..... | 481 | 827 | 313 | A. Leetzman..... | 320 | 320 |
| " " " ..... | 842 | 826 | 511 | J. D. Wurtzbach..... | 40 | 40 |
| " " " ..... | 993 | ... | ... | R. Nelson..... | 80 | 80 |
| " " " ..... | 74 | ... | 470 | Edmond Brice..... | 160 | 160 |
| " " " ..... | 1011 | ... | ... | J. L. Steele..... | 80 | 80 |
| " " " ..... | 374 | 3/461 | 1 | H. & G. N. R. R. Co..... | 98 8/10 | 98 8/10 |
| " " " ..... | 342 | 117 | ... | A. Heidenrich..... | 533 1/2 | 533 1/2 |
| 4 | | | | | | |
| R. H. Downman..... | 65 | 59 | ... | A. Bucholz..... | 160 | 160 |
| " " " ..... | 66 | ... | 60 | " " ..... | 160 | 160 |
| " " " ..... | 1309 | ... | 10 | Jno. Rabb..... | 121 | 121 |
| " " " ..... | 1238 | ... | ... | M. Sanders..... | 160 | 160 |
| " " " ..... | 173 | ... | 562 | C. Dohlman..... | 320 | 320 |
| " " " ..... | 1209 | ... | 4 | M. Sanders..... | 167 4/11 | 167 4/11 |
| " " " ..... | 1004 | ... | ... | " " ..... | 160 | 160 |
| " " " ..... | 75 | ... | 185 | Edward Brune..... | 160 | 160 |
| " " " ..... | 1154 | 5/945 | 14 | J. H. Hewitt..... | 320 | 320 |
| " " " ..... | 198 | ... | 268 | L. Eckert..... | 160 | 160 |
| " " " ..... | 516 | ... | 269 | F. Martines..... | 245 | 245 |

PAGE BOUND

| | | |

| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Land, original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| " " " ..... | 883 | ... | ... | J. M. Bourland..... | 8 4/10 | 8 4/10 |
| " " " ..... | 677 | ... | 353 | F. S. Schaeffer..... | 320 | 320 |
| " " " ..... | 678 | ... | 354 | " " " ..... | 320 | 320 |
| " " " ..... | 658 | ... | ... | G. Rehman..... | 150 | 150 |
| " " " ..... | 124 | 1558 | 1 | B. S. & F..... | 320 | 320 |
| " " " ..... | 519 | ... | 58 | F. Michart..... | 320 | 320 |
| " " " ..... | 375 | ... | 416 | Jas. Hesselgesser..... | 640 | 640 |
| " " " ..... | 515 | 1 | 415 | A. McRae..... | 640 | 640 |
| " " " ..... | 585 | 436 | 414 | J. Pelacio..... | 640 | 640 |
| " " " ..... | 784 | 533 | 56 | S. A. Thulmeyer..... | 320 | 320 |
| " " " ..... | 731 | ... | 355 | A. Schuessler..... | 584 | 584 |
| " " " ..... | 468 | ... | 420 | A. Kremensky..... | 320 | 320 |
| " " " ..... | 828 | ... | 421 | Jas. Wilson..... | 640 | 640 |
| " " " ..... | 829 | ... | 422 | " " ..... | 640 | 640 |
| " " " ..... | 273 | ... | 419 | S. D. Fowler..... | 320 | 320 |
| " " " ..... | 665 | ... | 423 | Jno. Simon..... | 120 | 120 |

(Here follows paster, Table of State and County Taxes due.)

PAGE BOUND VERTICAL IN BOOK

| State. | | | | State and County taxes due. | | | Co |
|---|---|---|---|---|---|---|---|
| Ad valorem. | School | Poll. | Penalty. | | Ad valorem. | Special. | Poll |
| 34.19 | 54.69 | .... | 8.88 | 1. | 54.69 | 82.04 | .... |
| | | | | 2. | | | |
| | | | | 3. | | | |
| | | | | 4. | | | |
| | | | | 5. | | | |

[Endorsed:] File No. —. Exhibit "A." Showing taxes, interest, and

| | State. | | | | State and County taxes due. | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | County. | | | | | | | Interest. | | | | |
| | Ad valorem. | School | Poll. | Penalty. | Ad valorem. | Special. | Poll | School dist. | No dist. | Penalty. | State. | County. | Advertising. | Costs. | Grand total. |
| 1. | 34.19 | 54.69 | .... | 8.88 | 54.69 | 82.04 | .... | .... | .... | 13.67 | 4.85 | 7.49 | 54.00 | 2.00 | 316.50 |
| 2. | | | | | | | | | | | | | | | |
| 3. | | | | | | | | | | | | | | | |
| 4. | | | | | | | | | | | | | | | |
| 5. | | | | | | | | | | | | | | | |

[Endorsed:] File No. —. Exhibit "A." Showing taxes, interest, and costs due on Lands Returned Delinquent or Sold to the State.

PAGE BOUND VERTICAL IN BOOK

List or Schedule.

EXHIBIT "B."

Attached to Petition for Foreclosure on Delinquent Taxes as Published in Accordance with Law.

*List of Land and Lots Delinquent on March 31st, 1908, for the Taxes of 1907 Only in Llano County. Reported under the Provisions of Section 10, Chapter 103, Laws of 1897.*

| Name of owner. | Abst. No. | Cert. No. | Surv No. | Original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| R. H. Downman | 175 | ... | ... | C. R. Deidrich | 320 | 320 |
| " " " | 174 | ... | 604 | " " " | 320 | 320 |
| " " " | 251 | ... | 113 | M. F. Funk | 320 | 320 |
| " " " | 252 | 482 | 114 | " " " | 320 | 320 |
| " " " | 397 | 3/464 | 3 | H. & G. N. R. R Co | 320 | 320 |
| " " " | 972 | ... | 108 | J. M. Lewis | 640 | 640 |
| " " " | 50 | 493 | 115 | H. Brocker | 20 | 20 |
| " " " | 51 | 493 | 116 | " " | 320 | 320 |
| " " " | 907 | ... | ... | J. C. Joy | 320 | 320 |
| " " " | 883 | 26/16 | ... | J. M. Bourland | 160 | 160 |
| " " " | 816 | ... | ... | H. Voight | 48 | 48 |
| " " " | 279 | ... | 477 | E. Garcia | 320 | 320 |
| " " " | 299 | ... | 477 | " " | 175 | 175 |
| " " " | 279 | ... | 477 | " " | 250 | 250 |
| " " " | 279 | ... | 477 | " " | 50 | 50 |
| " " " | 708 | 34 | 222 | L. Sailor | 745 | 745 |
| " " " | 707 | 34 | 223 | " " | 168 | 168 |
| " " " | 1358 | ... | 68 | W. R. Allen | 10 | 10 |
| ..... | 1508 | 1/400 | 4 | J. Poitevant | 112 | 112 |
| | | | | | 160 | 160 |

PAGE BOUND VERTICAL IN BOOK

| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| " " " ..... | 1398 | 1/410 | 4 | Wallace Fade..... | 160 | 160 |
| " " " ..... | 697 | 849 | 317 | A. Schenk..... | 320 | 320 |
| " " " ..... | 696 | 849 | 316 | " " ..... | 320 | 320 |
| " " " ..... | 401 | 31/468 | 15 | H. & G. N. R. R. Co..... | 640 | 640 |
| " " " ..... | 401 | 2/467 | 13 | " " " " " " " ..... | 640 | 640 |
| " " " ..... | 27 | ... | 19 | Wm. Aburnbeck..... | 320 | 320 |
| " " " ..... | 957 | ... | ... | J. B. Eaker..... | 160 | 160 |
| " " " ..... | 1124 | ... | 24 | H. Bauman..... | 160 | 160 |
| " " " ..... | 1196 | ... | 4 | " " ..... | 640 | 640 |
| " " " ..... | 899 | ... | 6 | J. W. Harris..... | 160 | 160 |
| 6 | | | | | | |
| R. H. Downman..... | 967 | ... | ... | N. Joiner..... | 160 | 160 |
| " " " ..... | 922 | ... | ... | F. M. Rynne..... | 160 | 160 |
| " " " ..... | 249 | 167 | 184 | Fisher & Miller..... | 268 | 268 |
| " " " ..... | 250 | 167 | 132 | " " ..... | 307 | 307 |
| " " " ..... | 845 | 296 | 92 | A. Voight..... | 320 | 320 |
| " " " ..... | 1122 | ... | ... | R. Bauman..... | 160 | 160 |
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| " " " ..... | 199 | 899 | 97 | " " ..... | 320 | 320 |
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| " " " ..... | 1460 | 1328 | 3 | W. D. Wright..... | 35 | 35 |
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| " | " | " | ..... | 727 | 992 | 253 | F. Schenck | 79 3/4 | 79 3/4 |
| " | " | " | ..... | 260 | 506 | 86 | C. Fix | 320 | 320 |
| " | " | " | ..... | 261 | 506 | 85 | " " | 320 | 320 |
| " | " | " | ..... | 807 | 541 | 601 | E. Vickering | 160 | 160 |
| " | " | " | ..... | 1361 | 21/328 | 4 | M. E. Buchanan | 160 | 160 |
| " | " | " | ..... | 1156 | ... | 6 | H. W. Harris | 160 | 160 |
| " | " | " | ..... | 1355 | ... | ... | G. W. Meredith | 160 | 160 |
| " | " | " | ..... | 1284 | ... | 4 | H. W. Harris | 480 | 480 |
| " | " | " | ..... | 15 | 29/302 | ... | H. Anderson | 118 | 118 |
| " | " | " | ..... | 197 | 688 | 600 | W. C. Eschenbauer | 640 | 640 |
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| " | " | " | ..... | 1289 | 21/326 | 2 | " " " | 152 | 152 |
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| " | " | " | ..... | 1232 | ... | ... | P. Parker | 48 | 48 |
| " | " | " | ..... | 1358 | ... | 68 | W. R. Allen | 77 1/2 | 77 1/2 |
| " | " | " | ..... | 813 | ... | 233 | F. Voight | 320 | 320 |
| " | " | " | ..... | 1270 | 1/400 | ... | F. M. Courtney | 160 | 160 |
| " | " | " | ..... | 638 | ... | 225 | M. Reston | 320 | 320 |
| " | " | " | ..... | 887 | ... | 321 | L. Castanon | 213 1/2 | 213 1/2 |
| " | " | " | ..... | 814 | ... | 232 | F. Voight | 20 | 20 |
| " | " | " | ..... | 1086 | 3/461 | 40 | J. L. Kirkpatrick | 160 | 160 |
| " | " | " | ..... | 75 | ... | 185 | E. Brune | 160 | 160 |
| " | " | " | ..... | 958 | 3/463 | 8 | G. L. Epperson | 160 | 160 |
| " | " | " | ..... | 1276 | 3/463 | 8 | " " " | 178 | 178 |
| " | " | " | ..... | 1547 | ... | A43 | " " " | 23 1/2 | 23 1/2 |
| | | | ..... | 1116 | ... | ... | J. M. Williams | 160 | 160 |

| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
| " " " ..... | 1090 | ... | ... | E. V. Lurly..... | 160 | 160 |
| " " " ..... | 1253 | 3/463 | 8 | I. Guess..... | 335 | 335 |
| " " " ..... | 396 | 3/463 | 7 | H. & G. N. R. R. Co..... | 640 | 640 |
| " " " ..... | 308 | ... | 129 | Ger. Eng. Co..... | 238 | 238 |
| " " " ..... | 729 | ... | ... | F. Schenk..... | 259 | 259 |
| " " " ..... | 250 | ... | 132 | Fisher & Miller..... | 2 1/2 | 2 1/2 |
| " " " ..... | 1079 | ... | 54 | W. A. Hall..... | 160 | 160 |
| " " " ..... | 971 | ... | ... | J. F. Lively..... | 160 | 160 |
| " " " ..... | 608 | ... | ... | F. Pankey..... | 160 | 160 |
| " " " ..... | 661 | ... | 14 | Wm. Rainbolt..... | 160 | 160 |
| " " " ..... | 707 | ... | 223 | L. Sailor..... | 309 | 309 |
| " " " ..... | 708 | ... | 222 | " " ..... | 149 1/2 | 149 1/2 |
| " " " ..... | 14 | ... | 56 | Otto Amberg..... | 216 | 216 |
| " " " ..... | 45 | ... | 354 | H. R. Berberstein..... | 160 | 160 |
| " " " ..... | 1114 | ... | 12 | N. E. Tubb..... | 160 | 160 |
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| " " " ..... | 789 | ... | 563 | E. Thrigg..... | 93 1/3 | 93 1/3 |
| " " " ..... | 853 | 697 | 214 | Jno. Watt..... | 160 | 160 |
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| " " " ..... | 991 | ... | ... | W. H. New..... | 160 | 160 |
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| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Original grantee. | No. acres assessed. | No. acres delinquent. |
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| Name of owner. | Abst. No. | Cert. No. | Surv. No. | Original grantee. | No. acres assessed. | No. acres delinquent. |
|---|---|---|---|---|---|---|
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| " " | " | 273 | 419 | S. D. Fowler | 640 | 640 |
| " " | " | 665 | 423 | Jno. Simon | 320 | 320 |
| | | | | | 120 | 120 |

ERTICAL IN BOOK

Total taxes on R. H. Downman's property, mineral rights only Revenue, $34.19; School, $54.69; Penalty, $8.86; Advalorem $54.69; Special, $82.04; Penalty, $13.66; Total $248.13.

9 THE STATE OF TEXAS,
*County of Llano:*

I, W. C. Wallace, Tax Collector of said County, do hereby certify that the within lands and town lots assessed on the Tax Rolls of said County for the year 1907, are delinquent for the taxes of 1908 only, and that I am entitled to credit for the taxes as shown thereon.

W. C. WALLACE,
*Tax Collector.*

Sworn to and subscribed before me this 12th day of May, 1908.
[SEAL.]
T. W. ALEXANDER,
*County Clerk, Llano County, Texas.*

*Certificate of Commissioners' Court.*

THE STATE OF TEXAS,
*County of Llano:*

In Commissioners' Court.

We certify that we have examined the report of lands and town lots assessed on the Tax Rolls of Llano County, for the year 1907, which are delinquent for the taxes of 1908 only, and find the same correct, and that W. C. Wallace, Tax Collector, is entitled to credit for the taxes as shown thereon, as follows, towit:

| | | | |
|---|---|---|---|
| State Ad Valorem Tax.. | 80.94 | County Ad Valorem Tax ..... | $129.28 |
| State School Tax..... | 129.28 | County Special Tax... | 193.34 |
| State Poll Tax..... | 6.00 | County Poll Tax..... | 1.00 |
| Total State Tax..... | 216.22 | District School Tax... | 72.15 |
| | | Total County Taxes. | 395.77 |

T. G. HILL,
W. J. GARRETT
J. F. MONTGOMERY.
M. G. OWEN,
*Co. Com.*

Given in open Court this the 12th Day of May, 1908.
A. H. WILLBERN,
*County Judge.*

Attest:
[SEAL.] T. W. ALEXANDER,
*County Clerk.*

THE STATE OF TEXAS,
*County of Llano:*

In District Court of Llano County, Texas, May Term, 1909.

To the Honorable Clarence Martin, Judge of said Court:

The State of Texas, hereinafter styled plaintiff, represented herein by the County Attorney of Llano County, complaining against R. H. Downman, hereinafter styled defendant, for cause of action would respectfully represent:

1st. That the defendant, R. H. Downman is a nonresident of the State of Texas, that he is a resident of the State of Louisiana, and that he now resides and has his domicile in the Parish of Orleans in the State of Louisiana.

2nd. That on January 1st, 1907, and prior thereto said defendant, R. H. Downman was, has ever since been and is now, the owner in fee under deeds of conveyance from sundry and divers persons, an estate and rights in and to the hereinafter described tracts and parcels of land in Llano County which, under the constitution and laws of the State of Texas, was on said date and is subject to taxation in the County of Llano and States of Texas, viz: Consisting of all the metals, ores, granites, rocks, stones and other minerals in and upon said tracts and parcels of land together with the right to enter upon said lands and search, dig and explore for and take therefrom said things and substances, which said estate and rights will be hereinafter referred to and designated as the minerals and mineral rights in and to said tracts and parcels of land.

3rd. That the defendant is justly indebted to the said State of Texas and County of Llano in the sum of $316.50 for taxes, interest, penalties and costs assessed against and due on said minerals and mineral rights of the said defendant in and to said tracts and parcels of land for the year 1907 in the manner following, as shown by "Exhibit A" hereto attached and made a part hereof. Due the State: Taxes, $88.88 interest on same $4.85, penalty on same $8.88; Due the County: Taxes, $136.73, interest on same $7.49, penalty on same $13.67, and $56.00 costs hereinafter more particularly set out.

4th. That the said State and County Taxes were duly and legally assessed for the year 1907 against said minerals and mineral rights of said defendant in and to said tracts and parcels of land as provided by law, and that the defendant has wholly failed and refused to pay the same or any part thereof and is now delinquent; that said taxes, interest, penalties and costs are due and owing said State and County and are, under and by virtue of the constitution and laws of the State of Texas, a charge against and a lien upon said minerals and mineral rights of the said defendant Downman in and to each of said tracts and parcels of land, which said tracts and parcels of land are more particularly described as follows, towit:

(1) 320 acres, Sur. No. 605, Abs. No. 175, Pat. No. 774, Vol. 12, originally granted to C. R. Deitrich and patented to the heirs of said Deitrich Jan. 30, 1856.

(2) 320 acres originally granted to C. R. Deitrich and pate to the heirs of said Deitrich, Sur. No. 604, Abs. No. 175, Pat. 775, Vol. 12, dated Feb. 28, 1856.

(3) 320 acres originally granted to Maximilian F. Funk, kn as Sur. No. 113, Cert. No. 482, Abs. No. 251.

(4) 320 acres originally granted to Maximilian F. Funk, kn as Sur. No. 114, Cert. No. 482, Abs. No. 252.

(5) 640 acres originally granted to the H. & G. N. R. R. Co., S No. 3, Cert. 3/464, Abs. No. 397, patented to H. Koenigsberger Pat. No. 240, Vol. 23, Mch. 14, 1874.

(6) 20 acres, a part of the J. M. Lewis Pre-emption Sur. of acres patented to Chas. Mayrhofen as assignee by Pat. No. 146, V 13, said 20 acres being described by metes and bounds in that c tain deed from J. C. Avery and wife to R. H. Downman recorded book Vol. 41, page 90, of the Llano County Deed Records, da July 10, 1905, said Lewis Pre-Emption known as Sur. No. 108, A No. 972.

(7) 320 acres originally granted to H. Broecker, Cert. N
12 493 Sur. No. 115, Abs. No. 50.

(8) 320 acres originally granted to H. Broecker, Cert. N 493, Sur. 116, Abs. No. 51.

(9) 160 acres originally granted to J. C. Joy as a pre-emptio known as Abs. No. 909, marked on the map P1995.

(10) 48 acres, a part of that tract of land originally granted J. M. Bourland, Cert. No. 26/16, Abs. No. 883, marked on the ma P1751, described by metes and bounds in deed from E. T. Barb et al. to R. H. Downman recorded in book Vol. 41, page 98, Llan County deed records, dayed July 13, 1905.

(11) 320 acres originally granted to H. Voight, Cert. 42, Sur 254, Abs. No. 816, patented to F. W. Grassmeyer Jan. 23, 1860, Pat No. 387, Vol. 28.

(12) 320 acres, Sur. No. 19, originally granted to Wm. Ahren beck, Abs. No. 27, patented to Forster Ludlow & Zimpleman Feb. 9 1876, Pat. No. 280, Vol. 22.

(13) 160 acres originally granted to Jno. B. Eaker and patented to R. W. Adams as assignee Oct. 23, 1882, Pat. No. 1, Vol. 14.

(14) 160 acres originally granted and patented to H. Bauman, Pat. No. 453, Vol. 10, Sur. 24, Abs. 1124.

(15) 640 acres originally granted and patented to H. Bauman Pat. No. 108, Vol. 4, Sur. 4, Abs. 1196.

(16) 160 acres originally granted to J. W. Harris, Sur. 6, Abs No. 899, more particularly described in deed from Mrs. Louise S. Bauman et al. to A. J. Bauman dated Mch. 29, 1898, recorded in book 29, pg. 563, Llano County Deed records.

(17) 160 acres in name of Nathan Joiner, Abs. No. 967, patented to J. C. Edwards assignee Jan. 31, 1882, Pat. No. 105, Vol. 13, more particularly described in the deed mentioned in preceding paragraph.

(18) 160 acres originally granted and patented to F. M. Ryme Nov. 14, 1878, Pat. No. 73, Vol. 8, Abs. No. 922.

(19) 288 acres originally granted to Fisher & Miller and
13 patented to H. F. Fisher, Pat. No. 1676, Vol. 9, Cert. 167, Sur. 184, Abs. No. 249.

(20) 307 acres, a part of Sur. No. 132, Cert. No. 167, Abs. No. 250, patented to H. F. Fisher by Pat. No. 1144 Vol. 13, described by metes and bounds in that deed from A. J. Bauman to R. H. Downman dated July 20, 1905, recorded in book Vol. 41, pg. 108 of the Llano County deed records.

(21) 320 acres, Abs. 815, Cert. 296, Sur. 92, originally granted to A. Voight.

(22) 160 acres, Abs. 1122, originally granted and patented to R. Bauman Apr. 26, 1882, Pat. No. 564, Vol. 1, marked on map 838591.

(23) 96 3/5 acres, Abs. 1487, Sur. 888, originally granted and patented to M. L. Bauman Apr. 27, 1894, Pat. No. 357, Vol. 12, described more particularly in above mentioned deed from A. J. Bauman to R. H. Downman.

(24) 80 acres, the south half of the southwest quarter of Sur. No. 51, originally granted to F. W. Wrede, Abs. No. 854, Cert. 507.

(25) 160 acres, Abs. 1424, Sur. No. 17, originally granted and patented to M. L. Bauman, described by metes and bounds in above mentioned deed from A. J. Bauman to R. H. Downman.

(26) 160 acres, Abs. No. 1423, Sur. No. 16, originally granted and patented to H. C. Bauman, described by metes and bounds in said deed from Bauman to Downman above mentioned.

(27) 320 acres, Abs. No. 200, Cert. No. 899, Sur. No. 98, originally granted to L. Eltrop.

(28) 320 acres, Abs. No. 199, Cert. No. 899, Sur. No. 97, originally granted to L. Eltrop.

(29) 640 acres, Abs. No. 1026, Cert. 1328, Sur. No. 3, marked on map 829486, originally granted and patented to Herman Bauman.

(30) 35 acres off of the south end of the W. D. Wright Survey, Abs. No. 1460, originally granted and patented to said W. D. Wright, said 35 acres described by metes and bounds in said
14 deed from A. J. Bauman to R. H. Downman above mentioned.

(31) 160 acres, the south half of Sur. 1 marked on map 89144, originally granted to the Sulphur Forks Iron Works Co., Abs. No. 769, Cert. 64.

(32) 144 acres, the south, and undivided 4/5 of the north half of Sur. 16 originally granted and patented to D. F. Owen, marked on map 81159, Pat. No. 276, Vol. 18, dated Jan. 4, 1864, Abs. No. 578.

(33) 320 acres, Abs. 693, Cert. No. 297, Sur. 93, originally granted to A. Strauss as shown by the map as A. Struve in Abstract of Texas Land Titles, being immediately south of and adjoining A. Voight Sur. 92.

(34) 79¾ acres in the southeast cor. of the F. Schenck Sur. No. 53, Abs. 727, Cert. 992, said 79¾ acres described by metes and bounds in deed from Bauman to Downman hereinbefore mentioned.

(35) 320 acres, Abs. 260, Cert. 506, Sur. 86, originally granted to Constantine Fix.

(36) 320 acres, Abs. 261, Cert. 506, Sur. 85, originally granted to Constantine Fix.

(37) 160 acres, Abs. 807, Cert. 511, Sur. 601, E. Vickering original grantee.

(38) 160 acres, Abs. 1361, Cert. 21 328, Sur. 4, M. E. Buchannan original grantee.

(39) 160 acres, Abs. 1156, Survey No. 6, H. W. Harris original grantee.

(40) 160 acres, Abs. 1355, G. W. Meredith original grantee.

(41) 480 acres, Abs. 1284, Sur. No. 4, H. W. Harris original grantee.

(42) 118 acres, Abs. 15, Cert. 29 302 H. Anderson original grantee.

(43) 640 acres, Abs. 197, Cert. 688, Sur. 600, W. C. Eschenbrenner original grantee.

(44) 640 acres, Abs. 836, Cert. 687, Sur. 553, Jacob Wil-
15 liams original grantee.

(45) 118 acres, Abs. 1141, Cert. 31 326, Sur. 2, J. A. Evans, original grantee.

(46) 151 acres, Abs. 1275, Cert. 21 326, Jeff Dillard original grantee.

(47) 150 acres, Abs. 1288, Cert. 21 326, Sur. 2, B. H. Jernigan original grantee.

(48) 152 acres, Abs. 1289, Cert. 21 326, Sur. 2, B. H. Jernigan original grantee.

(49) 160 acres Abs. 1387, C. R. Johns original grantee.

(50) 48 acres a part of the Survey No. 10, originally granted to P. Parker, Abs. No. 1232, described by metes and bounds in deed from S. H. Buchannan and wife to R. H. Downman recorded in book 41, page 116, Llano County Deed Records.

(51) 320 acres Abs. 813, Sur. No. 233, patented to Samuel Lewis assignee of Ferdinand Voight on Apr. 20, 1858, patent No. 548, Vol. 17, original grantee F. Voight.

(52) 160 acres, originally filed on and purchased by F. M. Courtney from the State, Cert. 1 400, Abs. 1270, being same land described in deed from B. H. Russell to J. D. Cain, recorded in Book 37, page 208, Llano County Deed Records.

(53) 320 acres, originally granted to Michael Reston and patented to his heirs Sur. No. 225, Abs. 638.

(54) 213⅓ acres, being the north one-third of that 640 acres of land patented to Mathew Cartwright as assignee of Louis Castanan on Jan. 24, 1878, by Pat. No. 133, Vol. 1, Sur. No. 321, Abs. 887.

(55) 20 acres of land, being part of that 320 acre survey patented to Sam'l Lewis as assignee of F. Voight April 20, 1858, Pat. No. 552, Vol. 16, Sur. 232, Abs. 814, said 20 acres described by metes and bounds in that certain deed from J. D. Cain and wife to R. H. Downman recorded in Book Vol. 41, Page 121, Llano County Deed Records.

(56) 77½ acres, a part of Sur. No. 68, Abs. 1358, W. R.
16 Allen original grantee, described in that certain deed from S. H. Buchannan and wife to R. H. Downman recorded in deed records of Llano County, Book Vol. 41, page 116.

(57) 160 acres, the John L. Kirkpatrick Pre-emption, Patented

to the heirs of J. V. Gossett as assignee, Pat. No. 348, Vol. 11, Jan. 28, 1891, marked on map F3654, Sur. No. 40 Abs. 1086.

(58) 160 acres, the south part of Abs. No. 75, originally granted to Edward Brune, Cert. 533, Sur. No. 185, said 160 acres described by metes and bounds in deed from Sarah I. Decker to R. H. Downman, page 129 Book 41, Llano County Deed Records.

(59) 160 acres, Abs. 958, Cert. 3/463, Sur. 8, originally granted to G. L. Epperson.

(60) 178 acres, Abs. 1276, Cert. 3/463, Sur. 8, G. L. Epperson original grantee.

(61) 231/2 acres, Abs. 1547, Sur. A3, G. L. Epperson original grantee.

(62) 160 acres, Abs. 1116, J. M. F. Williams original grantee.

(63) 160 acres, Abs. 1090, E. U. Lively original grantee.

(64) 335 acres, Abs. 1253, Cert. N. 3/463, Sur. No. 8, J. Guess original grantee.

(65) 640 acres, Abs. 396, Cert. 3/463, Sur. 7, originally granted to the H. & G. N. R. R. Co.

(66) 238 acres of land, being part of 640 acres in name of Cer. Eng. Co., Sur. 129, Abs. 308, described in deed from W. Y. Fowler and wife to R. H. Downman recorded in Book Vol. 11, page 133, Llano County deed records.

(67) 257¼ acres, part of the F. Schenck 320 acres known as sur. 53, Abs. 727, described by metes and bounds in the foregoing mentioned deed from Fowler to Downman.

(68) 21/2 acres, part of Fisher Miller Sur. No. 132, Abs. No. 250, described by metes and bounds in the said deed from W. Y. Fowler to R. H. Downman.

17 (69) 160 acres, the Wm. A. Hall, preemption, Sur. No. 54, Abs. 1079, patented to R. E. Phillips.

(70) 160 acres, the J. F. Lively preemption, patented to said Lively, Pat. No. 456, Vol. 8, Abs. 971.

(71) 160 acres, Abs. No. 608, being the Fidelia Pankey preemption patented to said Fidelia Pankey by Pat. No. 498, Vol. 1.

(72) 160 acres, Abs. 661, Sur. No. 14, the Wm. Rainbolt preemption, Pat. No. 499, Vol. 1.

(73) 309 acres out of 320 acres L. Sailor original grantee, Sur. No. 223, Abs. 707, described by metes and bounds in deed from W. A. Fox and wife to R. H. Downman, recorded Book Vol. 11, Page 138, Llano County deed records.

(74) 149½ acres out of 320 acres L. Sailor original grantee, Sur. No. 222, Abs. No. 708, described by metes and bounds in said deed from W. A. Fox and wife to R. H. Downman.

(75) 216 acres, being a part of 320 acres Otto Amberg original grantee Sur. No. 56, Abs. 14, described by metes and bounds in that deed from W. F. Gray and wife to R. H. Downman recorded in Book 41, page 142, Llano County deed records.

(76) 160 acres originally granted to H. R. Bieberstein, Sur. No. 364, Abs. No. 15, patented to said Bieberstein.

(77) 160 acres, originally granted to N. E. Tubbs, Sur. No. 12, Abs. No. 1114, patented to J. J. and E. N. Kuykendall.

(78) 160 acres originally granted and patented to J. J. Kuyk dall, abstract No. 1219.

(79) 93 1/3 acres, a part of 320 acres originally granted and p ented to E. Thrigg, Sur. No. 563, Abs. No. 789, described by me and bounds in deed from G. S. Gray and wife to R. H. Downm recorded in Book Vol. 41, Page 147, Llano Co. deed Records.

(80) 160 acres, Abs. No. 853, Cert. 697, Sur. No. 214, John W original grantee.

18 (81) 320 acres, Abs. 243, Cert. 190, Sur. 187, Fisher Miller original grantee.

(82) 160 acres, Abs. 991, W. H. New original grantee.

(83) 320 acres, Abs. 307, Cert. No. 5, Sur. 133, Ger. Emg. original grantee.

(84) 320 acres, Abs. 1152, Cert. No. 8, Sur. No. 20, H. W. Har original grantee.

(85) 182 acres, Abs. 1251, Cert 17 79, J. Georg original grant

(86) 64 acres, Abs. 1126, Sur. No. 20, J. S. Bourland origin grantee.

(87) 320 acres, Abs. 27a, Cert. 309, Sur. 55, Wilhelm Friedri original grantee.

(88) 160 acres, Abs. 645, Cert. 399, Sur. 315, Ed. Ricks origin grantee.

(89) 43 acres, being 33 acres a part of the Fisher & Miller s No. 144, Abs. 249, Cert. 167, and 10 acres part of the Fisher Miller sur. No. 132, Abs. 250 Cert. 168, said 43 acres being describ by metes and bounds in that certain deed from W. F. Gray to R. Downman dated June 5th., 1905, and recorded in Book 41, page 15 Llano County Deed Records.

(90) 94 3/10 acres, being an undivided 4/7 interest in and to 1 acres known as Sur. 15, Abs. 1290, M. F. King original grantee.

(91) 43 acres, a part of Sur. No. 87, Cert. 492, Abs. 351, origin grantee, Christian Heise, described in deed from W. F. Gray R. H. Downman, recorded in Book 41, page 151, Llano County Dee Records.

(92) 163 acres out of 320 acres known as survey No. 4, Abs. 114 Cert. No. 3, W. F. Gray original grantee, being that part of said tra of land situated in Llano County, Texas, said tract of land being the line of said Llano and San Saba County.

(93) 163 acres, part of 320 acres known as sur. No. 728, Cert. 79 Abs. 858, Geo. Weinhamer original grantee, being that part

19 said 320 acres tract of land situated in Llano County, Texas said tract of land being on the line of Llano and San Sab Counties.

(94) 163 acres, part of Sur. No. 729, Cert. 29/107, Abs. 736 C Schuler original grantee, being that part of said survey situated i Llano County, Texas.

(95) 163 acres, part of Sur. No. 3, Cert. No. 3, Abs. 794, J. F Torrey original grantee, being that part of said tract of land situated in Llano County.

(96) 199 acres, a part of that 221 acres out of Sur. No. 4, of 640 acres in name of W. F. Gray, said 221 acres being all of said 640

acre survey except that part conveyed by W. F. Gray to D. F. Gray and the minerals and mineral rights of which were conveyed to R. H. Downman by D. F. Gray, said 199 acres being that part of said 221 acres situated in Llano County, Texas.

(97) 140 acres, a part of 288 acres out of the J. V. Massey Sur. No. 83, Cert. 16, of 640 acres, Abs. 1438, described by metes and bounds in deed from D. F. Gray to R. H. Downman recorded in Book Vol. 41, page 156, Llano County Deed Records, said 140 acres being that part of said 288 acres located in Llano County, Texas.

(98) 22 acres, part of 335 acres which is a part of the W. F. Gray Survey No. 4, Cert. 936, said 335 acres being the same part of said survey of 640 acres conveyed to D. F. Gray by W. F. Gray, the said W. F. Gray and D. F. Gray owning the whole 640 acres, said 22 acres being that part of said 335 acres situated in Llano County, Texas.

(99) 576 acres, a part of the Christian Heise Sur. No. 87, Cert. 492, Abs. 351, described by metes and bounds in that deed from Annie F. Gray to R. H. Downman recorded in Book Vol. 41, page 160 of the Llano County deed records.

(100) 480 acres, a part of Fisher & Miller Sur. No. 134, Cert. 133, Abs. No. 239, being all of said survey except 160 acres off the south end thereof described in said deed from Annie F. Gray to R. H. Downman above mentioned.

20 (101) 75 acres, a part of Sur. No. 56, Cert. 989, Abs. No. 14, originally granted to Otto Amberg, said 75 acres described by metes and bounds in said deed from Annie F. Gray to R. H. Downman.

(102) 320 acres, originally granted to J. A. C. Schuster and patented to said J. A. C. Schuster and known as survey No. 602, Abs. 672, Pat. No. 177, Vol. 12.

(103) 320 acres originally granted and patented to J. A. C. Schuster, Sur. No. 603, Abs. 673, Pat. No. 772, Vol. 12.

(104) 160 acres, originally granted and patented to Peter Bader, Sur. No. 32, Abs. 884.

(105) 480 acres, patented to Gottfried Bader as assignee of the Garza Irrigation and Manufacturing Company, known as Abstract No. 960, Pat. No. 627, Vol. 31.

(106) 160 acres, the J. W. Gilmon preemption Sur. Abs. 1252, marked on the map P5860.

(107) 160 acres originally granted to W. R. Baker, Cert. 19 672, Abs. 134, marked on the map S 8583.

(108) 65 acres, a part of the Fisher & Miller Sur. 323, Abs. 1366 said 65 acres described by metes and bounds in deed from S. E. Hill and T. G. Hill to R. H. Downman recorded in Llano County deed records, page 171, Book 41.

(109) 320 acres, originally granted to Fisher & Miller, Sur. No. 124, Cert. 179, Abs. 245.

(110) 160 acres, a part of Sur. No. 126, Cert. No. 20, Abs. No. 236, originally granted to Fisher & Miller, said 160 acres described more fully in that deed from C. A. Hartman and wife to R. H. Downman recorded in Book Vol. 41, page 176, Llano County Deed records.

(111) 320 acres, the north half or Sur. No. 1 granted to H. & G. N. R. R. Co. Abs. No. 391, Cert. 13/2831.

(112) 106 2/3 acres, a part of Abs. No. 342, Cert 491, Sur. 2 originally granted to A. Heidenrich, described by metes a
21 bounds in that certain deed from said C. A. Hartman a wife to R. H. Downman.

(113) 640 acres, originally granted to Heinrich Steihle, Cert. 3 Sur. No. 357, Abs. 698.

(114) 160 acres, out of that 320 acres survey originally grant to Edward Brune, Cert. 533, Sur. 1470, Abs. 174, said 160 ac described by metes and bounds in that deed from E. L. Handy R. H. Downman recorded in Book H, page 179, Llano County de records

(115) 160 acres, the N. E. 1/4 of Sec. No. 2, surveyed for the Sta by Cert. No. — issued to J. Poitevant, which said 160 acres w purchased from the State by J. O. Lewis, known as Abstract N 1168, being the land conveyed by J. O. Lewis and wife to R. H Downman by deed dated June 23, 1908, recorded in Book Vol. I p. 187, Llano County deed records.

(116) 320 acres, Abs. 1295, Cert. 842, Sur. 96, H. J. Meek original grantee.

(117) 171 acres, Abs. 966, Cert. 3/468, Sur. 14, H. W. Harr original grantee and patentee, marked on map 81696.

(118) 346 acres, Abs. 1138, Cert. 3/470, Sur. 18, originall granted and patented to G. L. Epperson, marked on map 85921.

(119) 342 acres, Abs. 1139, Cert. 3/467, Sur. 14, originall granted and patented to G. L. Epperson, marked on map F5920.

(120) 320 acres, Abs. 1397, Cert. 232, Sur. No. 22, granted an patented to G. L. Epperson, marked on map F25307.

(121) 640 acres, Abs. 1137, Cert. 3/460, Sur. 10, granted an patented to J. L. Epperson, marked on map F5933.

(122) 320 acres, Abs. 25, Cert. 223, Sur. 21, originally grante to Adams, Beaty & Moulton, marked on map F10791.

(123) 320 acres, Abs. 156, Cert. 851, Sur. 297, originally grante to Paul Krahe.

(124) 640 acres, Abs. 298, Cert. 3/465, Sur. 9, originally gran ted to the H. & G. N. R. R. Co., marked on map 85657.

22 (125) 320 acres, originally granted to Gottfried Riston Cert. 306, Sur. 220, Abs. 635.

(126) 320 acres, Abs. 1277, Cert. 3/466, Sur. 12, G. L. Epperson original grantee.

(127) 320 acres Abs. 1197, Cert. 3/466, Sur. 12, G. L. Epperson original grantee.

(128) 320 acres, Abs. 1136, Certey 333, G. L. Epperson original grantee.

(129) 640 acres Abs. 1144, Cert. 172, A. Gallatin original grantee.

(130) 640 acres, Abs. 103, Cert. 3/470, Sur. 17, originally gran ted to the H. & G. N. R. R. Co.

(131) 160 acres, Abs. 297, Cert. No. 618, Sur. 304, J. W. Gral isch original grantee.

(132) 160 acres, Abs. 298, Cert. 618, Sur. 305, J. W. Garlsich original grantee.

(133) 160 acres, Abs. 918, originally granted to C. C. Oestreich.

(134) 320 acres, Abs. 1103, Sur. 16, originally granted to C. C. Oestreich.

(135) 320 acres, Abs. 804, Cert. 0-375, Sur. 3, originally granted to T. & N. O. R. R. Co.

(136) 80 acres, Abs. 1033, Cert. 23-93, Sur. 1, originally granted to I. & G. N. R. R. Co.

(137) 320 acres, Abs. No. 1030, originally granted to August Grenwelge.

(138) 160 acres, Abs. 679, Cert. 678, Sur. 324, originally granted to E. Schmidt.

(139) 160 acres, Abs. No. 680, cert. 678, Sur. 325, originally granted to E. Schmidt.

(140) 160 acres, Abs. 681, Cert. 678, Sur. 326, originally granted to Elizabeth Schmidt.

(141) 160 acres, Abs. 682, Cert. No. 678, Sur. 327, originally granted to E. Schmidt.

(142) 640 acres, Abs. 802, Cert. 31-244, Sur. No. 21, originally granted to the T. & N. O. R. R. Co.

(143) 320 acres, Abs. 481, Cert. No. 827, Sur. No. 313, A. Lutzman original grantee.

(144) 40 acres, part of the J. D. Wurzbach Sur. 511, Cert. 826, Abs. 842, described by metes and bounds in that certain deed from C. C. Oestreich and wife to R. H. Downman recorded in Book Vol. 41, page 208, Llano County deed records.

(145) 80 acres, the north ½ of the Rasmus Nelson pre-emption Sur. of 160 acres Abs. 993, described by metes and bounds in deed from I. S. Phillips and wife to R. H. Downman recorded in Book Vol. 41, page 213, Llano County deed records.

(146) 160 acres, a part of the 320 acres survey originally granted to Edward Brune Sur. No. 170, Abs. No. 74, described by metes and bounds in the aforesaid deed from I. S. Phillips and wife to R. H. Downman.

(147) 80 acres, being all the J. L. Steele pre-emption survey patented to R. A. & T. J. McInnis as assignee, Abstract No. 1011, Pat. No. 565, Vol. 22.

(148) 98 8/10 acres, a part of the east one-half of Sur. No. 1, Cert. No. 3/461, originally granted to the H. & G. N. R. R. Co., Abs. No. 374, marked on map as 85653, said 98 8/10 acres described by metes and bounds in aforesaid deed from I. S. Phillips and wife to R. H. Downman.

(149) 533⅓ acres, being the north 2/3 and the east half of the south third of that certain 640 acres tract originally granted to Adam Heidenrich, Sur. No. 117, Abs. 342.

(150) 160 acres, the east half of 320 acres originally granted to Adolph Bucholz, Survey No. 59, Abs. 65, Pat. No. 32, Vol. 33.

(151) 160 acres being the east half of that certain 320 acres originally granted to Adolph Bucholz, Sur. No. 60, Abs. No. 66, Pat. 32, Vol. 33.

(152) 121.6 10 acres originally pre-empted by and patented to John Rabb June 2, 1890, Pat. No. 117, Vol. 23, Sur. 10, Abs. 1309.

(153) 320 acres, originally granted to Carl Dahlman, Sur. 552, Abs. No. 173, patented to Joseph B. Weyman as assignee.

(154) 160 acres originally granted to M. Sanders and patented to Seth Bailey as assignee Oct. 14, 1886, Pat. No. 626, Vol. 18, Abs. No. 1238.

(155) 157.1 10 acres, patentee Mrs. L. D. Hilliard Sur. No. 4, Abs. No. 1209, Pat. No. 93, Vol. 21, M. Sanders original grantee.

(156) 160 acres, M. Sanders original grantee, J. D. Holden patentee, Abs. No. 1004, Pat. No. 190, Vol. 13.

(157) 160 acres, being the north half of the 320 acres survey originally granted to Edward Brune, on April 4, 1883, Patented to said Brune, Pat. No. 461, Vol. 45, Sur. 185, Abs. 75.

(158) 320 acres, Sec. No. 14, Cert. 5 945, issued to the H. & G. N. R. R. Co. being same land sold to J. P. Hewitt in 1884 by the State, by Hewitt to R. J. McCristian, known as Abs. No. 1151.

(159) 160 acres the east quarter of survey No. 268, originally granted and patented to L. Eckert, pat. No. 576, Vol. 28, Abs. 198.

(160) 245 acres, being the west part of Sur. No. 269, originally granted to Frederick Martens, Cert. No. 151, Abstract No. 546, the last two tracts of land being the same land described in deed to R. H. Downman from G. Schneider and Dora Schneider, dated July 17, 1905, recorded in Book Vol. H, page 230, Llano County Deed Records.

(161) 160 acres, the F. Wadlington pre-emption, patented to heirs of F. Wadlington Oct. 30, 1880, Pat. No. 343, Vol. 11, Abs. No. 1056.

(162) 640 acres, in name of the German Emigration Company, Sur. No. 131, Abs. No. 309, patented to James Ferguson.

(163) 320 acres originally granted to Heinrich Salge, Sur. No. 91, Abs. 1486.

(164) 80 acres, the north half of the southwest one-fourth of 640 acres originally granted to F. W. Wrede, Sur. No. 51, Abs. 854.

(165) 160 acres, patented to J. M. Talley and Benjamin Talley, originally granted to T. M. Robertson, Pat. No. 631, Vol. 16, Feb. 9, 1885, marked on map P 3076, and described in that certain deed from J. M. Talley and others to R. H. Downman recorded in book Vol. 41, page 243, Llano County Deed Records.

(166) 320 acres, Abs. 242, Cert. 230, Sur. 372, Fisher & Miller original grantees, patented to G. Schleicher by pat. No. 1078, Vol. 15.

(167) 160 acres, Abs. 959, originally granted to S. N. Farington immediately south of and adjoining L. Burgsdorf Sur. No. 250.

(168) 498 acres, a part of 640 acres survey No. 1, Abs. No. 394, Cert. 3 461, H. & G. N. R. R. Co. being all of said survey except those portions described in that certain deed from I. W. Williams and wife to R. H. Downman recorded in book Vol. H, page 251, Llano County Deed Records, and excepted from said deed.

(169) 160 acres originally granted to J. C. Winkler and pa-

nted to him, Abs. No. 1480, Cert. No. 3-161, marked on map F291
described in deed from J. C. Winkler and wife, to R. H. Downman
recorded in Book 41, page 251, Llano Co. deed records.

(170) 320 acres, Abs. 235, originally granted to Fisher & Mille
Cert. 186, Sur. No. 374.

(171) 320 acres, Abs. 246, originally granted to Fisher & Mille
Cert. No. 184, Sur. No. 403.

(172) 320 acres, abstract 351, originally granted to J. M. Hooker
Sur. No. ___, Cert. 853, marked on map 3-7164, Pat. No. 188, Vol
13, Aug. 31, 1875.

(173) 257 acres out of Abs. No. 1389 in Llano County, origin
ally granted to Dollie Brown and patented to Carl Lehmiere, Sur
No. 84, said 257 acres being that part of said tract lying in Llano
County, Texas.

(174) 160 acres, Abs. No. 976, originally granted to I
26 Lively as pre-emption and patented to Wm. Kyle, marked
on Map P 2417.

(175) 160 acres, being the S. E. quarter of Sec. 2, J. Patevant
Survey Cert. 2-142, awarded to the State to W. S. Lewis his appli
cation dated Feb. 20, 1897.

(176) 160 acres, Abs. No. 1099, Cert. 3-161, being the south
west quarter of Sec. No. 2, H. & G. N. R. R. Co. Survey, patented to
J. W. and W. J. Sampson as assignees of R. A. and J. T. McInnis,
pat. No. 575, Vol. 15, dated Jan. 13, 1897.

(177) 160 acres, the west half of Abs. No. 63, Cert. 873, Sur.
No. 60, originally granted to Adolph Bucholtz.

(178) 103 acres, part of Abs. 883, Cert. 26-13, originally granted
to J. M. Bourland, said 103 acres described in that certain deed from
J. C. Hampton and wife to R. H. Downman Book Vol. 41, page
537, Llano County deed records.

(179) 160 acres, Sur. 71, Abs. 875, originally granted and pat
ented to Thos. Williams, described by metes and bounds in deed re
corded page 341, Book 41, Llano County Deed Records.

(180) 160 acres, originally granted to H. Herring, Sur. 39, Abs.
536.

(181) 160 acres, the north one-half of the 320 acre sur. origin
ally granted to C. Rudloff, Sur. No. 12, Abs. No. 653, Pat. No. 119,
Vol. 13, Patented to L. Hans.

(182) 26 acres, a part of Abs. No. 965 of 160 acres originally
granted to J. G. Warnica and patented to Peter Warnica, marked
on map P1343, described by metes and bounds in deed from H. C.
Holden and others to R. H. Downman recorded in Book 41, page
58, Llano County Deed Records.

(183) 80 acres, the south half of Abs. No. 942, originally granted
to J. Bedwell as a pre-emption of 160 acres and patented to J. P.
Alvis, marked on map P2428.

27 (184) 160 acres, Abs. 946, originally granted to J. H.
Collins as a pre-emption and patented to James M. Mask, and
marked on map P2375.

(185) 160 acres, Abs. 1357, originally granted and patented to

John Adams as a pre-emption Pat. No. 367, Vol. 12, Marke
P6862.

(186) 499-2/10 acres, originally granted to John El
449, patented to Joseph B. Weyman, Sur. No. 356, Abs. 2

(187) 473 acres, out of sur. 5, originally gra-ted to the
N. R. R. Co. and patented to H. Koennigsberger, Abs. 395

(188) 94 acres out of Sur. No. 13, patented to W. C.
originally granted to H. & G. N. R. R. Co., Abs. 384.

The last two tracts of land being described by metes an
in that certain deed from Aug Winkel and wife to R. H. I
recorded in Book 41, page 507, Llano County deed recor

(189) 36 acres, part of Sur. No. 355, Abs. 731, originall
to Adam Schuessler, and which is also described by metes an
in the aforesaid deed.

(190) 96-4/10 acres, consisting of the J. M. Nicks 88
emption Survey patented to J. M. Nicks on Mch. 14, 1881,
39, Vol. 12, Abs. No. 992, and also 8-4/10 acres, a part of
originally granted and patented to J. M. Bourland by Pat.
Vol. 7, Abs. No. 883, described in that certain deed fro
Brown, guardian, etc. to R. H. Downman recorded in Book
Page 522, Llano County deed records.

(191) 320 acres, Abs. 677, Sur. 353, original grante
Schafer.

(192) 320 acres, Abs. 678, Sur. 354, original Grante
Schafer.

(193) 150 acres, being the west one-half of 320 acres
Originally granted to Gerhard Rehman and patented to s
man, Abs. 658, file No. on map being 3,7177, except 10 ac
W. Cor. said survey sold by W. H. Thompkins to L.
28 said 150 acres being the land described in deed fro
Ward and wife to R. H. Downman recorded in Book
558, Llano County deed records.

(194) 320 acres, Sur. No. 1, Abs. 124, originally gra
Beaty, Seale & Forwood.

(195) 320 acres, Sur. No. 58, patented to Gustave Loe
signee of Frederick Michel, pat. No. 1014, Vol. 17, Abs. 5

(196) 640 acres, originally granted to James Hesselges
ented to J. C. Tibbetts, Sur. No. 416, Abs. 375.

(197) 640 acres, Sur. No. 415, Cert. 1, originally grante
McRae, Abs. No. 515.

(198) 640 acres originally granted to Juan Palacio, Ce
patented to John James, Sur. No. 414, Abs. No. 586.

(199) 320 acres originally granted to S. A. Thulemeye
533, Sur. 56, Abs. 784.

(200) 584 acres, part of Sur. No. 355, originally grante
Schuessler and patented to Chester B. Starks, Abs. No. 731, b
of said survey except two small subdivisions thereof descri
deed from Geo. W. Lewis and wife to R. H. Downman reco
Book Vol. 43, Page 40, of the Llano County Deed Records.

(201) 320 acres, Sur. 420, Abs. 468, originally granted
thony Kremens'ki.

(202) 640 acres, Sur. No. 422, Abs. No. 828, origina
to James Wilson.

(203) 640 acres, Sur. No. 422, Abs. No. 829, origina
to James Wilson.

(204) The south half of the S. D. Fowler 320 acres
419, Abs. No. 273.

(205) That certain 120 acres of the John Simon Surv
Abs. 665, described in deed from R. Collinge to R. H.
recorded in Book 43, page 473, Llano County Deed Rec

(206) 745 acres out of the F. Garcia Sur. No. 477, A
ing that part described in that certain deed from F. Ochl
to R. H. Downman, recorded in Book Vol. 37, page
29 County Court Records.

(207) 168 acres out of Survey No. 222, Cert
708, originally granted to L. Sailor, and also 10 acres
No. 223, Cert. 34, Abs. No. 708, originally granted to L.
17 acres of land being described in that certain deed fr
Griffay to R. H. Downman, recorded in Book Vol. 39,
deed records of Llano county.

(208) 112 acres, a part of Survey No. 68, W. R. Alle
grantee, Abs. 1358, described in deed above mentioned fr
Griffay to R. H. Downman.

(209) 160 acres, the north half of half section No. 4,
vant original grantee, cert. 1/400.

(210) 160 acres, the south half of half section No. 4, Ce
granted to J. Poitevant, being same land awarded to W. E.
March 6, 1889, said last two tracts being same land des
deed above mentioned from Griffay to Downman.

(211) Those two certain 320 acre surveys of land
granted and patented to Andreas Schrier, known as surv
316 and 317 respectfully, and as abstract Nos. 699 and
No. 849, described in deed from R. D. Lauderdale to R.
man, Book 39, page 160, Llano County deed records.

(212) 640 acres, H. & G. N. R. R. Co. Sur. No. 15, Cert
Abs. No. 401, H. Koenigsberger patentee, Pat. No. 232, Vo

(213) 640 acres, H. & G. N. R. R. Co. Sur. No. 13, Abs.
Cert. 2/467, H. Koenigsberger patentee, Pat. No. 232, Vol

(214) 175 acres, that part of the 293.3 acres out of the E
Survey No. 477, Abs. 279, described in deed from V. Be
wife to R. H. Downman recorded in Book 37, page 51, Llano
deed records, which is situated in Llano County, Texas.

(215) 250 acres out of those portions of the E. Garcia S
477, Abs. No. 279, described in deed from Wm. Ochler and
R. H. Downman recorded in Book, Vol. 37, page 5,
30 County deed records, which is situated in Llano Coun

(216) 50 acres out of that portion of Sur. No. 47
No. 279, in name of E. Garcia, described in deed from Chas.
and wife to R. H. Downman recorded in Book Vol. 37, pa
Llano County deed records, which is situated in Llano Coun

4a. And that this suit is brought by virtue of and under t
thority of an Act of the Legislature of the State of Texas, pas

the regular session of the Twenty-fifth Legislature, convened at the City of Austin on the 12th day of January, A. D. 1897, and adjourned on the 21st day of May, A. D., 1897, and entitled "An Act to amend an Act entitled 'An Act to provide for the collection of taxes heretofore and that may hereafter be levied, making such taxes a lien on the land taxed, established and continuing such lien; providing for the sale and conveyance of lands delinquent for taxes since January 1, 1885, which may have been returned delinquent or reported sold to the State, or to any County, city or town for the taxes due thereon and not redeemed, or which may hereafter be returned delinquent or reported sold to the State, or to any County, city or town, to satisfy the lien thereon as enacted by the regular session of the Twenty-fourth Legislature, being Chapter 5*a*, Title CIV of the Revised Civil Statutes of 1895 relating to delinquent taxes and to repeal all laws in conflict with this Act'".

4. Plaintiff further avers that the Tax Collector of said Llano County has in all things complied with the provisions of Section 10 of the aforesaid amended Act, and in compliance therewith did make a list of the lands and lots on which, on the 31st. day of March, A. D. 1908, the State and County taxes for the preceding year remained unpaid, charging against the same all taxes and penalties assessed against the owner thereof; that he made said list in triplicate and presented the same to the Commissioners' Court of said Llano County for examination and correction of any errors that may appear therein.

5. Plaintiff avers that the Commissioners' Court of said
31 Llano County examined said lists for the correction of errors and approved the same; that the said Tax Collector filed one copy of such approved list with the County Clerk of said County, retained one copy thereof to be by him preserved, and forwarded one copy of such approved list of the Comptroller with his annual settlement reports; that the said list embraces the minerals and mineral rights of the defendant in and to said tracts of lands and lots and includes the several sums due for taxes as herein aforesaid assessed and due by the Defendant, being a lien upon the minerals and mineral rights of the defendant in and to each tract or lot of the hereinafter described lands by reason of such delinquency, and that the taxes hereinabove set out for which the defendant is delinquent and has failed to pay, is a correct list and statement thereof, and in accordance with the entry upon the Tax Collector's list as corrected and approved by said Commissioners' Court.

6. Plaintiff further avers that the Commissioners' Court of said Llano County caused the said corrected list to be advertised and published as required and provided for in Section 5 of the said Act, to wit, for three consecutive weeks in the "Llano News" a newspaper published in Llano County, State aforesaid, and that after such advertisement this suit is instituted against the defendant herein, delinquent for all taxes and penalties due, in the District Court of said Llano County in accordance with law. Plaintiff attached a copy of said publication marked Exhibit B, and also a copy of said list marked Exhibit A, to this petition, and refers to same to the

extent only as either or both are relevant to the minerals and mineral rights of the defendant in and to the lands and taxes herein set forth, and asks that they may be made a part hereof.

7. Plaintiff further avers that in addition to the taxes due the State and County aforesaid, the defendant justly owes and is indebted for the following costs and charges, which have become due and attached by reason of the defendant's delinquency as aforesaid, to wit:

Advertising, $54.00, being 25 cents per tract for 220 tracts;
32 $2.00, officer's costs, viz: $1.00 due the Tax Collector for preparing the delinquent list and certify same to the commissioners' court, and $1.00 to the County Clerk for making out and recording the data of the delinquent assessment and certifying same to the commissioners' court as provided for in Section 9 of said Act.

all of said costs and charges are authorized and required to be taxed and charged against defendant and collected by this proceeding, by virtue of the terms of said amended Act of the Legislature of the State of Texas.

8. That by reason of the premises the defendant became liable and promised to pay plaintiff the said several amounts of taxes as hereinbefore set out; that said taxes, interest, penalty and costs are past due and payable to plaintiff, and though legally demanded of the defendant has failed and refused and still fails and refuses to pay the same or any part thereof, to plaintiff's damage in the sum of Five Hundred Dollars; that by virtue of the Statutes of this State in such cases made and provided, plaintiff has a lien fixed on the said mineral and mineral rights in and to and upon each tract, lot or parcel of real property hereinbefore described, to secure the payment of said taxes, interest, penalty and costs, and the Commissioners' Court of said Llano County has caused suit to be filed to foreclose such lien and enforce the payment of said taxes, interest, penalty and costs.

Wherefore plaintiff prays that said defendant be cited to answer, and upon final hearing, that plaintiff have judgment against the defendant for the several sums of money due it for taxes, interest penalty and costs, as hereinbefore set out, with interest therein at the rate of six per cent per annum, as provided by law, and all costs of suit, with a foreclosure of its lien on the minerals and mineral rights of the defendant in and to each tract of said lands as hereinbefore set out; for an order of sale in compliance with law in such cases made and provided; for a writ of possession in behalf of the
33 purchaser thereunder, and for such other and further relief, general and special, to which the plaintiff may be entitled under the law and the facts.

KNIGHT STITH,
*County Attorney, Llano County, Texas,*
*Attorney of Plaintiff, and*
SLATOR & OATMAN.

THE STATE OF TEXAS,
*County of Llano.*

Personally appeared before the undersigned authority, Ku
Stith who, being duly sworn, says that he is the attorney brin
this suit, and that the averments contained in the foregoing peti
are true, to the best of the knowledge and belief of the affiant.

Sworn to and subscribed before me, on this the 6th day of Ma
A. D. 1909.

[SEAL.]

T. W. ALEXANDER,
*Clerk Dist. Court, Llano County, Texa*

Filed March 6th, 1909. T. W. Alexander, Clerk District Co
Llano County, Texas.

*Defendant's Original Answer.*

Filed April 24, 1909.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN

Cause Pending in the District Court of Llano County, Texas.

Comes now R. H. Downman, defendant in the above styled an
numbered cause, and, for answer to the matters and facts in plain
tiff's original petition alleged, says:

1. Said defendant demurs generally to the sufficiency of the fact
in said petition alleged; and says that same, in the manner and
form alleged, are insufficient in law to entitle plaintiff to the
34 relief, or to any part of the relief, prayed for against him.
Of this, his general demurrer, the defendant prays the judg-
ment of the court.

2. Said defendant denies all and singular the matters and facts
in said petition alleged and demands strict proof of same. Of this,
his general denial, defendant puts himself upon the country and
prays judgment.

3. Further and specially answering herein, defendant says that he
is not indebted to the State of Texas in the amounts for which plain-
tiff sues in this cause, or in any amount, for taxes, interest, penalties,
or costs for the year 1907, because of the following facts, which de-
fendant hereby alleges to be true, viz:

(1) Defendant alleges that he is not and was not on Jany. 1,
1907, or at any subsequent date, the owner, as is alleged by plaintiff,
of the mineral rights in the following tracts of real estate, located in
Llano County, Texas, and that no interest in said lands, or in the
mineral rights pertaining to same, ever were rendered for taxation

by him for said year, or by any other person having legal authority to charge him with liability for the payment of taxes thereon, viz:

(a) "Eighty acres, being all of the J. L. Steel pre-emption survey patented to R. V. and T. J. McInnis as assignee, abstract No. 1011, Patent No. 565, Vol. 22."

Defendant says in this connection that he does claim to be the holder and owner of a license or privilege to develop, mine, and sell such mineral (if any there be) as may be located in or under a certain 60 acres of said tract of land and capable of being mined at a profit, as will hereafter be more fully explained and alleged; and that, further than this, he never owned or claimed to own any portion of said land, or any right or license or privilege in respect thereto.

(b) Four hundred and ninety-nine and two-tenths acres, originally granted to John Ebert, Certificate 148, patented to Joseph B. Weyman, Survey No. 356, Abstract No. 201

Defendant says in this connection that he does claim to be
35 the holder and owner of a license or privilege to develop, mine and sell such minerals (if any there be) as may be located in or under a certain 100.2 acres of said tract of land and capable of being developed, mined and sold at a profit, as will hereafter be more fully explained and alleged. Defendant also says in this connection that further than this he never owned, or claimed to own, any portion of said land, or any license or privilege in respect thereto.

(c) One hundred and twelve acres, a part of Survey No. 68, original grantee W. B. Allen, Abstract No. 1358, described in deed mentioned in plaintiff's petition from Frank Griffay to R. H. Downman

Defendant says in this connection that he does claim to be the holder and owner of a license or privilege to develop, mine, and sell such minerals (if any there be) as may be located in or under a certain 80 acres of said tract of land, and capable of being developed, mined, and sold at a profit, as will hereafter be more full explained and alleged. Defendant also says in this connection that further than this he never owned, or claimed to own, any portion of said land, or any license or privilege in reference thereto.

(d) Three hundred and twenty acres, Survey No. 420, abstract No. 468, Original Grantee Anthony Kremenski; six hundred and forty acres, Survey No. 421, Abstract No. 828, Original Grantee James Wilson; six hundred and forty acres, Survey No. 422, Abstract No. 829, Original Grantee James Wilson; the south one-half of the S. W. Fowler 320 acres, Survey No. 419, Abstract No. 273; and that certain 120 acres of the John Simon Survey No. 423, Abstract No. 665, described in deed from R. Collinge to R. H. Downman recorded in Book 43, at page 173, Llano County deed records.

Defendant says in this connection that he did at once time claim to be the holder and owner of an undivided two-thirds interest in a certain license or privilege to develop, mine and sell such minerals if any there be) as may be located in or under the five tracts of land
36 above mentioned in sub-paragraph "(d)" and capable of being developed, mined and sold at a profit, as will hereafter be more fully explained and alleged. He further alleges in

the same connection that Chas. Schreiner a resident of Kerr Cou Texas, owns and holds the remaining undivided one-third interest said license or privilege, and that he (this defendant) sold and c veyed an undivided one-third interest in said license or privil which he formerly owned in respect to said five tracts of land in Llano Mineral & Mining Company, a private corporation, prior Jan'y 1, 1907, and that said corporation has continuously been si the date of said transfer and conveyance the owner of all the inte that this defendant ever formerly owned in said license or privil respecting said five tracts of land, or respecting any part of same cept an undivided one-third interest in said licenses or privile Defendant further says in this connection that other than this never owned or claimed to own any portion of any of said tracts land, or any license or privilege in reference thereto.

(e) "745 acres out of the E. Garcia Sur. No. 177, Abs. No. 2 being that part described in that certain deed from F. Oehler a wife to R. H. Downman recorded in Vol. 37, page 61, Llano Cou Deed Records."

(f) "175 acres, that part of the 293.3 acres of the E. Garcia surv No. 177, Abs. 279, described in deed from V. Beyer and wife to H. Downman recorded in Book 37, page 51, Llano County de records, which is situated in Llano County."

(g) "250 acres out of those portions of the E. Garcia Sur. N 279 described in deed from Wm. Oehler and wife to R. H. Downm recorded in Vol. 37, page 5, Llano County deed records, which situated in Llano County."

(h) "50 acres out of that portion of Survey No. 177, Abs. N 279 in the name of E. Garcia described in the deed from Chas. Oehl and wife to R. H. Downman recorded in Vol. 37, page 58, Llan County Deed Records, which is situated in Llano County."

Defendant alleges in this connection that he did at o
37 time hold and own a license or privilege to develop, mine an sell such minerals (if any there be) as might be located or under the tracts of land mentioned in sub-paragraphs "(e)" "(h)," both inclusive; he further says in this connection, howeve that prior to Jany. 1st. 1907, he sold and conveyed to said Llan Mineral & Mining Company all of the interest that he had ev previously owned or held in or with respect to, any of the land mentioned in said paragraphs; and that he has not since the da of said sale and conveyance held or owned any interest whatever i said lands, or in respect thereto, and that he never rendered an interest therein, or in respect thereto, for taxation for the year 1907 either in person or by agent.

Wherefore defendant says that, irrespective of the legal effect o the facts to be hereafter alleged, he is not, because of the facts abov alleged, liable to plaintiff for any taxes for the year 1907, penalties or costs, predicated on his alleged ownership of the mineral right in those portions of the above mentioned lands which, as above al leged, he does not, and never did, own or predicated upon his alleged ownership on the 1st day of January 1907 of mineral rights, privi-

leges or license which he did not own on said date, and has at no late since owned.

(2) Further specially answering herein, defendant says that with the exceptions above alleged and specified, he is, and on the 1st of January, 1907 was, the owner of such rights and privileges in the lands mentioned in plaintiff's petition as were conveyed to him by the instruments hereinafter mentioned, and that he is not, and never was, the owner of any other rights, privileges or licenses therein or with reference thereto, except such rights, privileges and licenses as were conveyed to and vested in him by said instruments.

(a) Defendant says that, with the exceptions above specified the owners of each of the tracts of land mentioned in plaintiff's petition had, prior to January 1, 1907, made, executed and delivered to him their respective instruments in writing by the terms of which
38 each of them, for a valuable consideration paid, or secured to be paid by defendant, granted to him the right, privilege or license to enter upon said respective tracts of land and to prospect for, develop, mine and sell as his own such minerals or mineral substances as he might discover thereon or thereunder by such prospecting, and which "might or could be worked for profit by underground excavations or open workings, or both."

(b) Defendant further says that each of said instruments is, and was, in the same form in all respects; and that the copy of the instrument which is hereto annexed, marked Exhibit "A" and prayed to be taken as a part of this answer, is similar in all respects to each of said other instruments, except that the names of the grantors, and the consideration paid, or to be paid, varied with the different instruments.

(c) Defendant further alleges that no developed mines existed on any of said lands at the time of the execution and delivery of said instruments; that none have since been developed; that no mineral or substances of any character mentioned in said instruments capable of being developed, mined, or sold at a profit are known, or were ever known to exist in, or on, any of said lands; that his purpose and intention in acquiring the license or privilege expressed in and conveyed by said instrument was merely to secure the right to prospect said lands for such mineral and mineral substances as might be contained therein, and capable of being developed, mined, and sold at a profit; and to mine and sell at a profit, and as his own property, such mineral substances, if any, as might be discovered as the result of such prospecting; and that such is the legal effect and proper construction of the instruments conveying to him said licenses or privileges.

Defendant further alleges in this connection that he has purchased, and holds, said rights or licenses to prospect said lands as a speculation merely, that he has as yet not prospected said lands or
39 any of them, and that the great majority thereof have never been examined or even seen by him or any of his agents. He further alleges that such privileges or licenses cover lands in one solid body, and that the lands to which they appertain have not been

selected with reference to any deposits of minerals known to ex thereon or therein.

He further alleges that said lands are not different in charac from the ordinary and average lands of Llano County; that sa county and the counties adjoining it are popularly supposed contain valuable minerals, but that no discoveries have as yet be made in said territory of mines, or of deposits of minerals capable being worked at a profit, and that no such development has as y taken place on any of the lands described in plaintiff's petition to enable him, or any one else, to determine whether said instr ments will vest in him the title and ownership of any phy-ic property whatever in the nature of minerals or mineral substanc capable of being developed, mined or sold at a profit.

Wherefore defendant says that he does not own, and that he di not known on January 1, 1907, any such right, title or interest in with reference to the lands mentioned in plaintiff's petition renders him liable for any of the taxes, penalties, or costs sough to be recovered of him in this action.

(3) Further specially answering herein this defendant says tha prior to the date when any of the alleged tax assessments were mad on which plaintiff predicates against him this suit for taxes, the re spective owners in fee of each of the tracts of land mentioned i plaintiff's petition had rendered them for all purposes of state county, and district taxes; that said renditions had been accepte by the proper taxing officers, and that all of the taxes due on sai lands and on every interest therein or in respect thereto had bee charged on the tax rolls of said county against said lands and th persons who so rendered them for taxation; and that all such 40 taxes for 1907 were subsequently paid by said owners. De fendant further alleges that after said lands had been ren dered for taxes by their respective owners for the year 1907, and after said renditions had been accepted and entered of record in the manner provided by law by the tax assessor of Llano County, and after the tax assessments for said year had been duly reported by said assessor to the County Commissioners' Court of said County to be equalized as the law directs, said Court by an order of date July 12, 1907, directed that the assessor of taxes of Llano County should assess for taxes "all minerals and mineral rights in, upon or attaching to any and all lands in Llano County" where it should be found by examination of the real estate transfer records of the County that said "minerals or mineral rights were owned by a different person from the owner or owners of the surface estate" and that said "minerals and mineral rights" should in all such cases be assessed for taxes independent of the "surface" estate.

Defendant further alleges that the tax assessor of Llano County did in pursuance of said order, and on no other authority, there upon enter and make for said court the tax assessments of which this suit is predicated. That in making said entries he wrote upon the assessment records nothing to indicate that taxes were intended to be thereby assessed against any other or different interests in said lands for the year 1907 than the entire fee simple and absolute title

in same. That having entered said renditions as above alleged, said tax assessor thereupon reported same to said Commissioners Court of Llano County. That said Court thereupon, without hearing any evidence whatever showing or tending to show that said lands contained any minerals of any value whatever, or that the value of said lands were in any respect enhanced by the presence of minerals or of mineral substances thereon, and without any such evidence having been heard by the tax assessor or any other person, approved the said assessments and ordered same to be entered upon the tax rolls. That, in pursuance of said order, said assessments were entered upon the unrendered rolls of said county, that a

41 the head of said assessments was written the words "Mineral Rights Only," and that said roll made up in the manner above alleged constitutes the sole basis for the claims alleged against defendant in the plaintiff's petition.

Defendant further alleges that in attempting to separately assess for taxation the minerals, or mineral rights in the lands mentioned in said petition, the officers of said county made no reduction whatever in the valuation at which said lands had been assessed for taxation against the holders and owners of the fee simple title. He further alleges that in assessing for taxation all of the [illegible] lands of said county for said year, in respect to which no rights to prospect for, develop, and sell minerals had been granted by the owners of the fee simple titles, said officers valued same at figures exactly similar to the valuations assessed against the owners of the fee simple titles of the lands mentioned in plaintiff's petition; although said other lands are of the same character as those mentioned in plaintiff's petition; and although there exist just the same reasons for supposing that said other lands contain minerals and mineral substances capable of being mined and sold at a profit as there are for supposing or finding that the lands mentioned in plaintiff's petition are of that character. He further alleges that, because of the rule or system adopted as aforesaid by the tax assessing officers of said county for the valuation of land therein for the purpose of taxation for the year 1907, all taxable lands which are situated in said county and on which the mineral privileges are retained by the owners of the fee, are valued at a different and lower rate for purposes of taxation than the other and exactly similar lands in said county on which said mineral privileges have been conveyed to persons other than the owners of the fee. Because of these facts, he alleges that the tax assessments of said county for said year are unequal and ununiform, that they unjustly, arbitrarily, and systematically discriminate against him and all other persons who have mineral privileges in the lands of others in said county, and that they impose upon said latter class of persons greater burdens of taxation than

42 upon any other class of persons owning similar rights of similar value in said county, and that for said reasons said tax assessment against him and against the other persons of the class to which he belongs are null and void because to enforce them would result in the enforcement of an unequal and ununiform system of taxation, and in taking the property of this defendant, and the

property of all other individuals of the class to which he belongs without compensation, and without due process of law, and would violate rights guaranteed to him by the Constitution of the State of Texas, and the Constitution of the United States.

Wherefore defendant says that the alleged tax assessments for the taxes of the year 1907 on which plaintiff sues are wholly void

1. Because defendant did not own on January 1, 1907, any such interest in any of the lands mentioned in plaintiff's petition as rendered him liable for the taxes, or for any part of the taxes, sought to be recovered of him in this suit.

2. Because said tax assessments were made after the property mentioned in them had already been legally assessed for all taxes properly levied or chargeable against it for said year; and

3. Because said assessments were made in pursuance of a general plan or system which was calculated to result in, and which has in fact resulted in, the double, unequal, and ununiform assessment for the taxation of all lands in Llano County in which the right to prospect for and sell the minerals is owned by persons other than the owner of the fee, and for that reason unjustly discriminate against this defendant and all other persons in said county of the class to which he belongs.

Premises considered, defendant prays that plaintiff take nothing by its suit, that it have judgment for its costs in this behalf expended, and for general relief.

R. H. DOWNMAN,
By His Attorneys, GREGORY, BATTS & BROOKS.

53

"EXHIBIT A."

THE STATE OF TEXAS,
*County of Llano.*

Know all men by these presents: That I, Sarah I. Decker, a feme sole, of the County of Llano, and State of Texas, for and in consideration of the sum of Six Hundred and Forty Dollars to me in hand paid and secured to be paid by R. H. Downman of which the sum of One Hundred and Sixty Dollars is paid in cash, the receipt whereof is hereby acknowledged, and the balance of said sum is evidenced by three certain promissory notes of even date herewith, for the sum of one hundred and sixty dollars each, bearing interest at the rate of six per cent per annum from date until paid to become due and payable in one, two and three years respectively after date, made, executed and delivered by said R. H. Downman to the said Sarah I. Decker each of said notes containing the usual contingent maturity and attorney's fee clauses,

Have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto the said R. H. Downman of the Parish of Orleans, in the State of Louisiana, all metals, ores, granites, rocks, stones and other minerals, metallic and non-metallic, organic and inorganic, in place or severed from the earth, which might or could

be worked for profit by underground excavations or open working, or both, and the by products of any and all such things and substances, now known to be or hereafter found to be in and upon the hereinafter described lands, together with the right to enter upon the same and search, dig, and explore for such things and substances and the right to use and appropriate so much of the surface of said land as may be required for any roads, railroads, sidetracks and switches, and the construction thereof on or across said land, to be used in the transportation of persons and any freight and property whatsoever from or to any place wheresoever, and also the right to make and construct in, on and under said land tramways, head shafts, drifts, levels, tunnels and other underground ways, in which may be handled and transported anything whatsoever from or to any places whereso-ever, whether under or upon said land or elsewhere, and it is expressly agreed and understood that this conveyance passes the right to the use of so much of the surface of said land as may be required for the aforesaid preliminary and exploration work and rights of way, but it is not intended to convey, and this conveyance shall not be construed to convey any of said surface for the purpose of mining, reducing, quarrying, hewing, cutting, shaping, dressing, manufacturing, dispersing of, handling, preparing for market or other purposes, marketing or forwarding any of the aforesaid metals, ores, granites, rocks, stones, and other minerals, and by products but any of said surface convenient, valuable or important to the use and enjoyment of any, all or a part of such things, purposes and operations, may be purchased in fee simple by the grantee, his heirs, legal representatives or assigns, as hereinafter provided.

To have and to hold the aforesaid estate and rights in and to the above described premises together with all and singular the rights and appurtenances thereto in anywise belonging unto the said R. H. Downman, his heirs and assigns forever, and I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular the aforesaid estate and rights unto the said R. H. Downman his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

But it is expressly agreed and understood

1. That the vendor's lien is retained against the above conveyed and described estate and rights until the above described notes and all interest thereon are fully paid according to their face and tenor, effect and reading, when this deed shall become absolute.

2. The grantee and his assigns, or any one representing or employed by them, or either of them, shall not permit any live-stock of any character, to graze or run at large on any of said lands belonging to the grantor, or her representatives or assigns.

3. The grantee and his legal representatives and assigns, shall have the right to use any water from natural pools, springs and streams in or on any of said surface, to such an extent and in such manner, as shall not interfere with the use thereof by the owner of the surface for stock and domestic puspases, but this right on the part of the grantee, his representatives and assigns,

shall not extend to wells, cistern- or surface tanks made by the grantor, or her heirs, legal representatives or assigns, or those under whom they hold, but said grantee, his heirs, legal representatives and assigns, shall have the right to make tanks, cisterns and reservoirs and put down wells on, and in, said surface, and shall have and enjoy the exclusive use of water therefrom.

4. The grantor, or any owner under said grantor, of the surface of said lands, or part thereof, may use so much of the stone to be found on, or under, the surface owned by him, as may be necessary for the construction thereon of building, fences and other improvements for his own use.

5. No right to use any wood grown on said land shall pass by this conveyance.

6. If any openings are made in the surface of said lands by the grantee, or any person under him, in prospecting or otherwise which might be a menace to the safety of persons and live stock, the grantee or person making the same, shall, at his own expense, at all times, keep such openings carefully guarded, and when not at work in or on the same such openings shall be by him filled up, or securely covered and fenced.

At any time after the date hereof the grantee, his legal representatives or assigns shall have the right to purchase in fee simple so much of the surface of said lands as may be convenient, valuable and important to the full use and enjoyment of all or a part of the things, purposes and operations contemplated in the granting clause above, at the price fifteen dollars per acre for unim-
16 proved grazing lands and twenty-five dollars per acre for unimproved agricultural lands but if buildings or improvements be upon the lands selected for purchase hereunder by the grantee, his legal representatives or assigns, the value of such buildings and improvements shall be estimated by the then owner of the surface and mineral estates in said land, and failing agreement by them each shall select an arbitrator to whom shall be submitted their differences or matters in dispute, and if such arbitrators should fail to agree, they shall select an umpire to assist them, and the value estimated in either of said ways shall be paid by the grantee, or other purchaser hereunder, in addition to the aforesaid stipulated price per acre; the surface so purchased shall be conveyed by general warranty deed, and such purchaser, his legal representatives, before beginning operations thereon, shall enclose the same in a good and sufficient hog and stock proof fence.

The lands hereinbefore referred to are situated in Llano County, Texas, and are known and described as follows:

160 acres, the John L. Kirkpatrick pre-emption patented to the heirs of J. V. D. Cossett, assignee, by patent No. 348, Vol. 11, January 28, 1891, marked on the map F3664, and known as survey No. 40.

160 acres, the south part of Abst. No. 75, originally granted to Edward Brune, by virtue of Certificate No. 533, and patented to him by patent No. 461, Vol. 18, dated April 4, 1883, and known as survey No. 185, the said 160 acres, beginning at the southwest corner of the subdivision of this survey conveyed by J. F. Dancer to

John Rabb, a stone mound on the east bank of a creek from which a post oak 14" in diameter bears North 50-1/2° East 9-1/2 varas and another bears south 718 varas to the southwest corner of said Brune survey a post oak bears south 42-3/4° west 33 varas, and another bears north 41-1/2 west 20-1/4 varas; thence east with the south line of said survey 1258 varas to a stake and mound for the southeast corner of said survey; thence north with the east line of said survey 718 varas to the southeast corner of said Dancer subdivision, a stone mound from which a mesquite bears north 36-1/2° west 13 varas; and another bears south 57° west 22 varas; thence west 1258 varas to the place of beginning.

In Testimony whereof witness *our* hands, this 10th day of July, A. D., 1905.

SARAH I. DECKER

THE STATE OF TEXAS,
*County of Llano:*

Before me, the undersigned authority, on this day personally appeared Mrs. Sarah I. Decker, a feme sole, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 10th day of July, A. D. 1905.

[SEAL.]

JOHN C. OATMAN,
*Notary Public, Llano County, Texas.*

Filed for Record Jan. 18th, A. D. 1906 at 3 o'clock P. M. and recorded Jan. 26, A. D. 1906 at 10-45 o'clock A. M.

T. W. ALEXANDER,
*Clerk Co. Ct. Llano County, Texas.*
By H. F. McLEOD, *Deputy.*

THE STATE OF TEXAS,
*County of Llano.*

I, T. W. Alexander, Clerk of the County Court of Llano County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the original instrument of writing dated 10th day of July, A. D. 1905, together with its certificate of authentication as the same appears of record in my office in said County in Book 41 Record of Deeds pages 125-129.

Given under my hand and seal of office, this 20th day of July, 1908.

[SEAL.]

T. W. ALEXANDER,
*Clerk Co. Ct. Llano Co., Texas.*
By J. B. WINKLER, *Deputy.*

Filed April 24, 1909. T. W. Alexander, Clerk Dist. Court, Llano Co. Texas.

48

*Agreement of Parties.*

Filed May 14, 1909.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

Cause Pending in the District Court of Llano County, Texas.

Come now the parties to the above styled and numbered cause, and, for the purpose of the trial thereof, agree that the following facts are true and shall be considered as having been proved on the trial, viz:

**1.**

The defendant owned on January 1st, 1907, such interest in, and in respect to, the lands mentioned in plaintiff's petition as are hereinafter specified, and no other interest in, or in respect to, any of said lands, viz:

(1) He did not, as alleged in plaintiff's petition, own any interest in, or in respect to, 112 acres of the W. R. Allen Survey, Ab. No. 1358, Sur. No. 68; but did own such interests in, or respect to, 80 acres of said survey (if any) as are vested in him by the legal tenor and effect of an instrument of writing of the stereotyped form hereinafter mentioned and described

(2) He owned no interest in, or in respect to, the following tracts of land mentioned in plaintiff's petition, except as undivided one-third of such interests (if any) in, or in respect to, said tracts as were conveyed by instruments of the stereotyped form hereinafter mentioned, viz:

(*a*) 320 acres, Sur. No. 440, Ab. No. 468, original grantee Anthony Kumenski.

(*b*) 640 acres, Sur. No. 421, Ab. No. 828, Original grantee, Jas. Wilson.

(*c*) 640 acres Survey No. 422, Ab. No. 829, original grantee Jas. Wilson;

49 (*d*) The S. ½ of the S. W. Fowler 320 acres, Sur. No. 419, Ab. No. 273;

(*e*) That certain 120 acres of the Jno. Simon survey No. 423, Ab. No. 665, described in deed from R. Collinge to R. H. Downman recorded in Book 43, at page 473, Llano County Deed Records.

In this connection it is admitted that Chas. Schreiner of Kerr County, Texas, and the Llano Mining and Mineral Company, a private corporation, owned on January 1, 1907, an undivided two-thirds interest in such rights and privileges (if any) in, or with respect to, the five tracts of land last above mentioned as were conveyed

by said stereotyped instruments; and that the deed records of Llano County so showed on said date.

(3) He did not on January 1, 1907, own any character of interest in, or with respect to, the following tracts of land mentioned in plaintiff's petition, or in, or with respect to, any portion or portions of said tracts, viz:

(*a*) 745 acres of the E. Garcia Sur. No. 477, Ab. No. 279, being that part described in a certain deed from F. Oehler and wife to R. H. Downman, recorded in Vol. 37, page 51, Llano County Deed Record.

(*b*) 175 acres of that part of 293.3 acres out of the E. Garcia Survey No. 477, Ab. No. 279, described in deed from D. Byer and wife to R. H. Downman, recorded in book 37, page 51, Llano County Deed Records, which is situated in Llano County.

(*c*) 250 acres out of those portions of the E. Garcia Survey No. 279 described in deed from F. Oehler and wife to R. H. Downman, recorded in Vol. 37, page 5, Llano County Deed Records, which is situated in Llano County.

(*d*) 50 acres out of that portion of Survey No. 477, Ab. No. 279 in the name of E. Garcia described in deed from Chas. Oehler to R. H. Downman recorded in Vol. 37, page 58, Llano County Deed Records, which is situated in Llano County.

In this connection it is admitted that R. H. Downman had
50 prior to Jan'y 1st, 1907, conveyed to the Llano Mining and Mineral Co., a private corporation, all of the interests which he ever owned (if any) in, or with respect to, the four tracts of land last above mentioned, or any part of same, and that said conveyances were on said date duly recorded in the deed records of Llano County.

## II.

Except as hereinabove stated, R. H. Downman was on January 1st, 1907, the owner of such interest (if any) in, or with respect to, each of the tracts of land described in plaintiff's petition as were conveyed to him by the instruments hereinafter mentioned, and was not the owner of any other interests in, or with respect to, said lands or any part or parts thereof.

The instruments or conveyances above mentioned are (with the seven exceptions hereinafter specified) all in stereotyped form and are all exactly similar in form and legal effect to the instrument attached to defendant's answer and marked "Exhibit A"—the various stereotyped instruments only differing as to the names of the various grantors, the considerations paid or to be paid and the description of the property intended to be affected.

The seven instances in which said instruments are not in said stereotyped form are the following, viz: Deeds recorded in Llano County deed records as follows: Vol. 41, pages 165, 340 and 619; Vol. 39, page 149 and 160; Vol. 40, page 120, Book 43, p. 473.

With reference to the seven instruments or conveyances last above specified, it is agreed that they were not in the form of the stereotyped instruments above mentioned, and that either party may introduce in evidence the originals or recorded copies of said non-stereo-

typed instruments without the necessity of filing same prior to th trial, among the papers of the cause.

III.

51 It is admitted that each of the grantors in each of the in struments above mentioned, respectfully and voluntarily ren dered for State and county taxation for the year 1907, each o the tracts of land mentioned in plaintiff's petition in the manne hereinafter specified; and that all of said renditions were made by said grantors prior to the time when any of the tax assessments were made against the defendant on which the taxes claimed in this suit are predicated; It is further admitted that said renditions by said grantors were accepted by the tax assessor in the form and manner that they were made; that they were carried forward into the tax rolls as made, and that all taxes predicated thereon have been paid by said grantor. It is further admitted that all of said tax renditions made by said grantors, and the assessments made in pursuance thereof, are in similar form and that either party may show the form of all of same, by introducing in evidence any one of said renditions and assessments.

IV.

It is agreed that the Commissioners' Court of Llano County duly passed and entered on its minutes, on June 12, 1907, an order of the following terms, viz:

"In accordance with the advice and instructions of the Comptroller of the State of Texas, it is considered and ordered by the court that the Assessor of Taxes of Llano County, be and he is hereby directed to assess for taxes all minerals and mineral rights in, upon or attached to any and all lands in Llano County where it is found that said minerals or mineral rights are owned by a different person from the owner or owners of the surface estate in and to all such lands, and that said mineral and mineral rights so held and owned be assessed for taxes independent of the surface estate."

It is further agreed that the tax assessments on which this suit is perdicated were made in pursuance of said order; and that they were made after the making and acceptance by the Tax Assessor of the renditions made as above stated by the grantors in all of the instruments above mentioned.

52 V.

It is agreed that either party may on the trial introduce in evidence any relevant evidence from any of the county records, and that the originals of said records may be used for said purpose, without any necessity for procuring copies thereof or of giving notice as provided by law.

VI.

It is further agreed that the Commissioners' Court of Llano County at its regular term in February, 1907, by an order of said

Court made and entered in the minutes of said court levied the county general and special taxes on all property in said county subject to taxation for said year; and that said order was made and entered in the manner and form prescribed by statute.

That the taxes herein sued for were assessed in the manner shown by the inventory assessment sheet or list introduced in evidence herein, were thereafter carried to and placed upon the tax rolls for the year 1907 of said county by the tax assessor of said county and that said tax rolls for said year were made up and certified to by the proper officer, all of said proceedings having been done and performed in the manner and form prescribed by statute.

That the delinquent tax list of said county for taxes unpaid or delinquent on March 31, 1908, for the year 1907, in which appear the taxes sued for herein, were prepared in triplicate showing the penalties assessed against same, including the penalties sued for herein, by the tax collector of Llano County, Texas, and presented by him to the Commissioners' Court of said county for examination and correction of errors that might appear therein.

And that said delinquent list showing the taxes and penalties sued for herein was thereafter examined and approved by the aforesaid Commissioners' Court and the three copies thereof disposed of as the law directs, and that said delinquent tax list was thereafter duly published for the time required by law in the "Llano News",
53 a newspaper published in said Llano County, Texas; all of said proceedings having been done and performed in the manner and form prescribed by statute.

KNIGHT STITH,
*County Attorney for Llano County, Texas.*
SLATER & OATMAN,
*Attorneys for Plaintiff.*
GREGORY, BATTS & BROOKS, &
J. H. McLEAN,
*Attorneys for Defendant.*

Filed May 14, 1909. T. W. Alexander, Clerk Dist. Court, Llano Co. Texas.

*Judgment.*

Dated May 14, 1909.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

MAY 14TH 1909.

Now, on this the 14th. day of May, A. D., 1909, this cause being regularly reached and called for trial, when came the plaintiff by its attorneys, and also came the defendant in person and by attor-

neys, and all parties announced ready for trial; and no jury being demanded, the matters of fact, as well as of law, were submitted to the court; and the Court having heard the pleadings, the evidence adduced and the argument of counsel, and being fully advised in the premises, is of opinion that the law and the facts are with the defendant, and that the plaintiff is entitled to take nothing by this suit.

It is therefore, ordered, adjudged and decreed by the Court, that the plaintiff, The State of Texas, take nothing by this suit as against the defendant, R. H. Downman, and that the said defendant, R. H. Downman, go hence without day, and that he be, and is hereby, exempt from the payment of any costs in this behalf incurred.

It is further ordered by the Court that the plaintiff pay all costs in this behalf incurred, to be collected as, in such cases, is
54 provided by law.

To which ruling and judgment of the Court, the plaintiff, then and there, in open court, excepted, and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

*Court's Findings of Fact & Conclusions of Law.*

Filed May 29, 1909.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

Cause Pending in the District Court of Llano County, Texas.

In this case the State of Texas, plaintiff, has sued R. H. Downman defendant, to recover certain taxes alleged to be due for the year 1907. After hearing the evidence, I rendered a judgment for the defendant; and, at the request of counsel for plaintiff, herein state the findings of fact and conclusions of law upon which that judgment is predicated, viz:

*Findings of Fact.*

1. The defendant owned on January 1, 1907, such interests in, or in respect to, the various tracts of land mentioned in the plaintiff's petition as are hereinafter specified, and no other interests in, or in respect to, any of said lands, viz:

(1) He did not, as alleged in plaintiff's petition, own any interest in, or in respect to, 112 acres of the W. R. Allen Survey, Abstract No. 1358, Survey No. 68; but did own such interests in, or in respect to, 80 acres of said survey (if any) as were vested in him by the legal tenor and effect of an instrument of writing of the stereotyped form hereinafter mentioned and described.

(2) He owned no interests in, or with respect to, the following tracts of land mentioned in plaintiff's petition, except an un-divided one-third of such interests (if any) in, or with respect to, said tracts as were co. veyed by instruments of the stereotyped form hereinafter mentioned, viz:

55

(*a*) 320 acres, Sur. No. 440, Ab. No. 468, Original Grantee, Anthony Kremenski.

(*b*) 640 acres, Sur. No. 521, Ab. No 828, Original Grantee, James Wilson;

(*c*) 640 acres, Sur. No. 422, Ab. No. 829, Original Grantee, James Wilson;

(*d*) The south one-half of the S. W. Fowler 320 acres, Sur. No. 419, Ab. No. 273;

(*e*) That certain 120 acres of the Jno. Simon Survey No. 423, Ab. No. 665, described in deed from R. Collinge to R. H. Downman, recorded in book 43, at page 473, Llano County Deed Records.

In this connection I find that Chas. Schreiner, of Kerr County, Texas, and the Llano Mineral and Mining Company, a private corporation, owned on January 1, 1907, an undivided two-thirds interest in such rights and privileges in, or with respect to, the five tracts of land last above mentioned as were conveyed by said stereotyped instruments; and that the deed records of Llano County so showed on said date.

(3) Said defendant did not on January 1, 1907, own any character of interest in, or with respect to, the following tracts of land mentioned in plaintiff's petition; or in, or with respect to, any portion or portions of said tracts, viz:

(*a*) 745 acres of the E. Garcia Sur. No. 477, Ab. No. 279, being that part of said survey which is described in a certain deed from F. Oehler and wife to R. H. Downman, recorded in Vol. 37, page 61, Llano County Deed Records;

(*b*) 175 acres of that part of 293.3 acres out of the E. Garcia Survey No. 477, Ab. No. 479, described in deed from D. Byer and wife to R. H. Downman, recorded in book 37, page 51, Llano County Deed Records;

56

(*c*) 250 acres out of those portions out of the E. Garcia Survey No. 279, described in deed from F. Oehler and wife to R. H. Downman, recorded in Vol. 37, page 5, Llano County Deed Records, which is situated in Llano County, Texas;

(*d*) 50 acres out of that portion of Sur. No. 477, Ab. No. 279, in the name of E. Garcia described in deed from Chas. Oehler to R. H. Downman, recorded in Vol. 37, page 58, Llano County deed records, which is situated in Llano County, Texas.

In this connection I find that the defendant had prior to Jany. 1, 1907, conveyed to the Llano Mineral and Mining Company, a private corporation, all of the interests which he ever owned (if any), in or with respect to, the four tracts of land last above mentioned, or any part of same; and that said conveyances were prior to said date duly recorded in the deed records of Llano County, Texas.

2. The defendant owned on January 1, 1907, the fee simple title to the following tract of land mentioned in plaintiff's petition, viz:

"Ab. No. 875, Sur. No. 17, Original Grantee Thos. Williams, No. of acres assessed 160". But in this connection I find that the defendant had prior to the institution of this suit paid all of the taxes due for the year 1907 on said 160 acre tract of land.

3. With the exceptions hereinabove stated, R. H. Downman, was on January 1, 1907, the owner of such interests (if any) in, or with respect to, each of the tracts of land mentioned in the plaintiff's petition as were conveyed to him by the instruments hereinafter mentioned; and was not the owner of any other interests in, or with respect to, said lands, or any part or parts thereof.

The instruments or conveyances are (with the six exceptions hereinafter specified) all in stereotyped form, and are all exactly similar in form and legal effect to the instrument attached to defendant's answer and marked "Exhibit A."—the various stereotyped instruments only differing as to the names of the respective grantors, the considerations paid are to be paid, and the descriptions of the
57 properties intended to be affected. The copy of said stereotyped instruments appearing in the transcript as part of the defendant's answer is hereby made part of these findings by this reference.

The six instances in which said instruments are not in said stereotyped form are the following, viz: Deeds recorded in Llano County, Texas, Deed Records as follows, viz: Vol. 41, pages 165 and 619; Vol. 39, pages 145 and 160, Vol. 40 page 420, Vol. 43, p. 473.

The six instruments or conveyances last above specified were not in the form of the stereotyped instruments above mentioned. Each of said six instruments were on the trial introduced in evidence and will be found in the transcript. Same as there set out are by this reference made parts of these findings.

4. Each of the grantors in each of the instruments hereinabove mentioned (stereotyped as well as non-stereotyped) respectively and voluntarily rendered each of the tracts of land mentioned in plaintiff's petition for State and county taxation for the year 1907, in the manner hereinafter specified. All of said renditions were made by said grantors prior to the making of any of the tax assessments against the defendant on which the taxes claimed in this suit are predicated. Said renditions by said grantors were accepted by the tax assessor in the form and manner that they were made, they were carried forward into the tax rolls as made, and all taxes predicated thereon have been paid. All of said tax renditions made by said grantors and the tax assessments made in pursuance thereof are in similar form, and are respectively similar in all respects to the rendition and assessment of the lands of A. J. Bauman (one of said grantors), which rendition and assessment are copied in the transcript and, as there copied, are hereby made parts of these findings, showing the form of each of the renditions and assessments of said grantor of R. H. Downman.

Each of said grantors, in rendering said lands for taxation, listed same as "Real Estate", and did not employ any language indicating an intention to exclude or except from their renditions as made any mineral rights or other interests whatever in said lands. They each in making the renditions wrote therein

the "name of the owner" of the land "the abstract number", "the number of the survey", "the name of the original grantee and the number of the certificate", "the number of acres", and "the value of the land", in the manner and form prescribed by statute for the rendition of real estate.

Said renditions as made were accepted by the tax assessor, and were approved by the Board of Equalization. The tax rolls as made up and predicated upon said renditions and assessments are in the form prescribed by statute for making up such rolls showing taxes due on real estate where the same has been rendered for taxation by the owners, and do not in any way or by any language indicate an intention to exclude from the taxes shown to be due, any interests in the lands listed thereon. At the same time of approval of the renditions of the grantors of R. H. Downman there were submitted to the Commissioners' Court approving same the tax assessments made as hereinafter stated by the tax Assessor of Llano County against R. H. Downman, contained in the list hereinafter referred to and on which this suit for taxes is predicated, which said tax assessments against R. H. Downman were at the same time and contemporaneously with the assessments against said grantors approved by said Commissioners' Court.

5. On July 12, 1907 (after the tax re-ditions by said grantors had been made and accepted by the tax assessor as above stated) the Commissioners' Court of Llano County, Texas, passed and had entered on its minutes an order of the following terms, viz:

"In accordance with the advice and instructions of the Comptroller of the State of Texas, it is considered and ordered by the Court that the Assessor of Taxes of Llano County, be and is hereby directed to assess for taxes all minerals and mineral rights in, upon, or attaching to any and all lands in Llano County, where it is

"found that said minerals and mineral rights are owned by

"a different person from the owner or owners of the surface

"estate in and to all such *such* lands, and that said mineral and mineral rights so held and owned be assessed for taxes independent of the surface estate."

The tax assessor of Llano County made the tax assessments on which this suit is predicated in pursuance of said order of the Commissioners' Court. In making said assessments, the tax assessor heard evidence, and examined no lands, to ascertain whether they in fact contained minerals or not; but merely examined the deed records of the county and made therefrom a list of all of the lands in the county in which the owners had executed and recorded written instruments purporting to grant to others mineral rights, or the right to search for minerals, in their lands. The list so made contained no mention of any tracts of land in which the entire fee simple titles were held by the same person or persons, or in which mineral rights had not been conveyed by the owners of the fee to third persons. At the head of the list so made the Tax Assessor wrote the words "Mineral Rights Only." Opposite each tract of land shown on the list he wrote the assessed value of fifty cents per acre, the name of the owner of the mineral rights, and a description of the land by abstract

number, survey number, original grantee, etc. as shown by the statement of facts. The list so made was submitted to the Board of Equalization as a roll of unrendered property, was by the Board approved as made without any evidence having been heard, and now forms the basis of the claim against the defendant for taxes. Said list was approved by the Board contemporaneously with its approval of the rolls showing the assessment made against the grantors of defendant as hereinabove specified.

In assessing the lands mentioned in plaintiff's petition for taxation against the grantors hereinabove mentioned for the year 1907, and in assessing for taxation against the owners of the fee simple titles the other lands in the county in which mineral rights
60 had been conveyed to third persons, neither the tax assessor nor the Board of Equalization made any reduction in the valuation of same on account of the fact that mineral rights therein had been conveyed to third persons; but said lands were, in assessing the taxes of the owners of the fee simple titles, valued exactly as other lands in the county of similar quality were valued in assessing taxes against those land owners who had not conveyed to third persons any mineral or other rights in their lands. In other words, all lands in the county in which the ownership of the entire fee simple title had not been divided by conveyances of mineral rights to third persons were assessed for taxation at values corresponding exactly to the value placed on the lands mentioned in plaintiff's petition in assessing same for taxation against the grantors of defendant.

6. No developed mines exist, or existed on January 1, 1907, on any of the lands mentioned in plaintiff's petition; and no minerals of any character, capable of being worked for profit, or having a value, are shown to have existed on any of said lands. Said lands do not differ so far as mineral indications are concerned, from the lands of the country in general in which mineral rights have not been conveyed to third persons by the owners of the fee simple titles.

7. Defendant is and on Jan'y 1, 1907, was, a resident and citizen of the Parish of Orleans, State of Louisiana.

8. The Commissioners' Court of Llano County at its regular term in February, 1907, by an order of said court made and entered in the minutes of said court levied the county, general and special, taxes on all property in the County subject for taxation for said year; and said order was made and entered in the manner and form prescribed by statute. The rates of taxation so levied and the various purposes for which they were levied will be found in the statement of facts; and as there contained are hereby made part of these findings:

The taxes here sued for were assessed in the manner shown by the inventory assessment sheet, or list, which is copied in the statement of facts, were thereafter carried to and placed upon the tax rolls
61 for the year 1907 of said county by the tax assessor of said county, and said tax rolls for said year were made up and certified to by the proper officer, all of said proceedings having been done and performed in the manner and form prescribed by statute.

The delinquent tax list of said county for taxes unpaid or delinquent on March 31, 1908, for the year 1907, in which appear the taxes

sued for herein, were prepared in triplicate, showing the penalties assessed against same, including the penalties sued herein, by the tax collector of Llano County, Texas, and presented by him to the Commissioners' Court of said County for examination and correction of errors that might appear therein. Said delinquent tax list showing the taxes and penalties sued for herein was thereafter examined and approved by the aforesaid commissioners' court and the three copies thereof disposed of as the law directs, and said delinquent tax list was thereafter duly published for the time required by law in the "Llano News," a newspaper published in Llano County, Texas; all of said proceedings having been done and performed in the manner and form prescribed by statute.

*Conclusions of Law.*

1. The written instruments of the stereotyped form above mentioned conveyed to the defendant only such of the minerals and mineral substances located on the lands mentioned in plaintiff's petition as might be ascertained to exist and to be capable of being "worked for profit by underground excavations or open workings, or both." There is no evidence that there exist on the lands any physical property to which title has vested in defendant by virtue of the grant contained in the instrument; and, as it is agreed that the defendant has no interests in the lands, except such interests (if any) as vested in him by virtue of said instruments, I conclude that he did not own on January 1, 1907, any interests in said lands, except the incorporeal license, or privilege to prospect and develop said lands and to thereby acquire title to such (if any) of the minerals or mineral substances as might be discovered therein or thereon of the character, quality, and quantity specified in the instruments. I further conclude that the tax assessments on which the suit is predicated do not purport to assess for taxation the incorporeal licenses or privileges above mentioned; and that same could not lawfully be assessed against him in Llano County.

2. As an additional reason why the plaintiff should not recover the taxes claimed under said stereotyped conveyances, I conclude that under the Constitution and Laws of this State before defendant could be compeled to pay taxes in Llano County on account of any interest, right or privilege vested in him by the terms of these deeds it would devolve upon the plaintiff to establish evidence that there was mineral or mineral substances on the lands embraced in these deeds that could be worked at a profit by underground excavations or open workings or both & that said facts are not established by the evidence.

3. I conclude that the burden of proof was upon the plaintiff to show by a preponderance of the evidence that there existed on Jan'y 1st 1907, some mineral or mineral substance upon those lands mentioned in the plaintiff's petition in which the defendant owns unmodified mineral rights by virtue of the six non-stereotyped instruments above mentioned; and that the plaintiff is not entitled to recover of defendant the taxes claimed against those lands because the

preponderance of the evidence does not show that any minerals or mineral substances were located on or contained in said lands or that said instruments vested in defendant the title to any physical property.

4. I conclude that the tax renditions for 1907 made by the grantors of the defendant as above stated and the tax assessments predicated thereon embraced all interests in the lands mentioned in plaintiff's petition, including "all mines, minerals, quarries and fossils in or under same;" and that all taxes due the State and County on said lands for the year 1907 have been paid, including all taxes due on the minerals in or on said lands. I further conclude
63 that when the State and County once assesses the entire interests in property for a given year and collect the taxes thereon, they cannot thereafter re-assess the same property, or re-assess any interest therein, for the same year in the name of another and again collect taxes thereon for said year, even though the second assessment be against the real owner of the interests assessed.

5. The above conclusions make it necessary to render a general judgment for the defendant; and I therefore find it unnecessary to reach any conclusion on the question of whether or not the facts disclosed by the record and above stated in my findings of fact render the tax assessments against the defendant void because of inequality and systematic discrimination in the plan by which they were made.

CLARENCE MARTIN,
*Judge 33rd Jud. Dist. of Texas.*

To which conclusions of fact and law as announced by the court in rendering the judgment in this cause the plaintiff then and there in open court excepted.

KNIGHT STITH,
*County Attorney of Llano County, and*
SLATOR & OATMAN,
*Attorneys for Plaintiff.*

Filed May 29, 1909. T. W. Alexander, Clerk Dist. Court Llano Co. Texas.

*Bill of Exceptions.*

Filed June 7, 1909

In the District Court of Llano County, Texas, May Term, 1909.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

Be it remembered that upon the trial of the above entitled and numbered cause in this court on the 14th day of May, 1909, the following proceedings were had, to-wit:

The court having heard the pleadings read, the evidence adduced and the argument of counsel proceeded to render a judgment in favor of the defendant and against the plaintiff, to which judgment
64 of the court the plaintiff then and there in open court excepted and gave notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, and at the same time and in open court plaintiff by its attorneys requested the Court to prepare findings of fact and conclusions of law upon which said judgment was based; that, in pursuance of said request, the court did prepare the findings of fact and conclusions of law which were filed in this cause on the 29th day of May, 1909, and which now constitute a part of the record in this cause;

To which findings of fact and conclusions of law so found by the Court the plaintiffs except in the following particulars, viz

First. To the First Conclusion of law plaintiff excepts.

(a) Because it holds that the stereotyped deed did not convey to said R. H. Downman any interests or rights in lands taxable under the Constitution and laws of Texas.

(b) Because it held that the tax assessment and rendition as made by the Tax Assessor of Llano County of the rights and interest held by R. H. Downman in the said lands did not assess for taxation any and all interests, rights and privileges owned or held by R. H. Downman in and to the lands specified in said deeds, and that the same could not be lawfully assessed against R. H. Downman in Llano County.

Second. To the Second Conclusion of law plaintiffs except.

(1) Because it held that said deed did not convey any interest to said R. H. Downman taxable under the Constitution and laws of this State until the plaintiff established by evidence there was mineral or mineral substances on the lands embraced in said deed that could be worked at a profit by underground excavations or open workings or both.

Third. To the Third Conclusion of law plaintiff excepts.

(1) Because it holds that the six instruments that convey undivided mineral rights to the said R. H. Downman did not convey any interest taxable under the Constitution and Laws of Texas until the
65 plaintiff established by preponderance of the evidence that such mineral or mineral substances were located on or were contained in said lands, and that said instruments did not vest in the defendant the title to any physical property.

Fourth. To the Fourth Conclusion of law the plaintiff excepts.

(1) Because it holds that the tax renditions for 1907 made by grantors of defendant embraced all interests in the lands mentioned in plaintiff's petition, when in truth and in fact said renditions at the time made, while not in the manner and form made expressly excluding from said rendition the idea that all interests were rendered, were never approved by the Commissioners' Court as a full rendition of all interests in the land but on the contrary said Commissioners' Court ordered and directed the Tax Assessor of Llano County to render and assess separate and apart for taxes the said

estate and rights that had been by said grantors conveyed to R. H. Downman, and said renditions as made by said grantors were not approved until the said assessments had been made by said Assessor against the said R. H. Downman at which time the said Commissioners' Court of Llano County approved the rendition as made by the grantors of R. H. Downman and also the assessments as made by the Assessor of Llano County of the estate and rights of R. H. Downman as conveyed to him by the stereotyped and six other deeds introduced in evidence in this case, and because it held that in as much as the grantors of R. H. Downman had rendered the land as above specified that the Commissioners' Court had no authority before the date of approving the said rendition of said grantors to instruct the Tax Assessor to assess separately the estate and rights in the land conveyed by the grantors to R. H. Downman and thereafter to approve both assessments and require the payment of taxes by the grantors of R. H. Downman of the estate they owned in said land and also the payment by R. H. Downman, the defendant, of the taxes assessed against him for the estate and rights in the land owned by him.

And now here tenders this its Bill of Exceptions and prays that the same be examined, approved and signed by the court and
66 ordered to be filed as a part of the record in this case.

KNIGHT STITH,
*County Attorney of Llano County, Texas, and*
SLATOR & OATMAN,
*Attorneys for Plaintiff.*

This Bill of Exceptions examined, approved and signed by the Court and is directed to be filed as a part of the record in this case. Done this the 4th day of June, 1909.

CLARENCE MARTIN,
*Judge of the 33rd Judicial District of Texas.*

Filed June 7th, 1909. T. W. Alexander, Clerk Dist. Court, Llano Co., Texas.

30, 20, & 10 *Day Order.*

Dated May 14, 1909.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

MAY 14TH, A. D. 1909.

It is ordered by the Court that the parties hereto be and they are hereby allowed thirty days after adjournment of this court within which to file a Statement of Facts and twenty days after adjournment

within which to file Bills of Exceptions; and that the Court be allowed ten days after adjournment within which to file its Conclusions of law and findings of fact.

*Assignment of Errors.*

Filed July 16, 1909.

In the District Court of Llano County, Texas.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

Now comes the State of Texas, plaintiff in the above styled and numbered cause, and files this its Assignment of Errors committed against it by the lower court on the trial of said cause, and
67 prays that each and all of same be considered and sustained:

First. The Court erred in its first conclusion of law in holding that the stereotyped deeds introduced in evidence by the plaintiff did not convey to the defendant R. H. Downman any interest or right in land taxable under the Constitution and Laws of the State of Texas, whereas, said instrument did convey an estate, right and interest in the lands mentioned in said deeds taxable under the Constitution and Laws of the State of Texas.

Second. The Court erred in its first conclusion of law in holding that the tax assessments and rendition of the rights and interests held by defendant R. H. Downman in the said land as made by the Tax Assessor of Llano County, Texas, did not assess for taxation any and all interests, rights and privileges owned or held by said defendant Downman in and to the lands specified in said deeds and that the same could not be lawfully assessed against him in Llano County, Texas, in that said defendant Downman failed and refused to render for taxation said estate, right and interest owned by him in said lands and that said Assessor in the exercise of his duty and the authority given him by law rendered said estate, right and interest in said lands conveyed by said deeds to said Downman, and in the manner and form as provided by law.

Third. The court erred in its second conclusion of law in holding that said stereotyped deeds did not convey any interest to said R. H. Downman taxable under the Constitution and laws of the State of Texas until the plaintiff had established by evidence that there were minerals or mineral substances on the lands embraced in said deeds that could be worked at a profit by underground excavations or by open workings, or both, in that the grantors of said defendant R. H. Downman had for a valuable consideration, to-wit, $2.00 per acre, conveyed to said Downman by said instruments certain rights, titles, and interests in said lands and whether it was of

much or of little value it did not place the burden upon th
68 State to develope and establish the value of the rights con
veyed to said Downman in order to make the same taxable.

Fourth. The court erred in its third conclusion of law in hold
ing that the six instruments introduced in evidence by plaintiffs con
veying unqualified mineral rights to defendant did not convey an
interest taxable under the constitution and laws of the State of Texa
until plaintiff established by preponderance of the evidence tha
such mineral or mineral substances were located upon or contained i
said lands and that said instruments did not vest in defendant Down
man title to any physical property, in that said instruments in du
and legal form of deed convey to said Downman all the minerals an
mineral substances located in or upon said lands, further granting t
said defendant the right to go upon said lands and mine the same
without any qualification or reservation.

Fifth. The Court erred in its fourth conclusion of law in hold
ing that the tax rendition for 1907 made by grantors of defendan
Downman embraced all interests in the lands mentioned in plain
tiff's petition, when in truth and in fact said renditions at the time
made, while not, in the manner and form made, expressly excluding
from said rendition the idea that all interests were rendered, were
never approved by the Commissioners' Court as a full rendition of all
interests in the lands but on the contrary said Commissioners' Court
ordered and directed the Tax Assessor of Llano County to render and
assess separate and apart for taxes the said estate and rights that had
been by said grantors conveyed to defendant Downman, and said ren
ditions as made by said grantors were not approved until the said as
sessments had been made by the Assessor against said Downman at
which time the said Commissioners' Court of Llano County approved
the renditions as made by the grantors of R. H. Downman and also
the assessments as made by the assessor of Llano County of the estate
and rights of R. H. Downman as conveyed to him by the stereotyped
and six other deeds introduced in evidence, and because it
69 held that inasmuch as the grantors of R. H. Downman had
rendered the land as above specified that the Commissioners'
Court had no authority before the date of approving the said rendi
tions of said grantors to instruct the Tax Assessor to assess separately
the estate and rights in the lands conveyed by said grantors to R. H.
Downman and thereafter to approve both assessments and require
the payment of taxes by the grantors of R. H. Downman of the
estate they owned in said land and also the payment by R. H. Down
man the taxes assessed against him for the estate and rights he owned
in the lands.

KNIGHT STITH,
*County Attorney of Llano County, and*
SLATOR & OATMAN,
*Attorneys for Plaintiff.*

Filed July 16, 1909. T. W. Alexander, Clerk Dist. Court, Llano Co., Texas. By H. F. McLeod, Deputy.

*Bill of Costs.*

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

Bill of Costs.

| | |
|---|---|
| District Clerk's Fee | $1.50 |
| Sheriff, Serving Citation | 5.00 |
| County Attorney's Fee | 200.00 |
| Stenographer's Fee | 3.00 |
| District Clerk, Transcript to Ct. Civ. Appeals | 25.00 |
| Total | $234.50 |

*Certificate of Clerk.*

THE STATE OF TEXAS,
*County of Llano:*

I, T. W. Alexander, Clerk of the District Court of Llano County, Texas, do hereby certify that the above and foregoing 58 pages, numbered from 1 to 15, 15*a* and 16 to 57, all inclusive, (pages herein do not correspond with number pages in original transcript) and
70 the preceding portion of this page, contain a true and correct transcript of all the orders made and proceedings had on the trial of said cause No. 1721, The State of Texas, v. R. H. Downman; tried at the regular spring term, 1909, of the district court of Llano County, Texas; except that the original statement of facts is not included herein, but the said original statement of facts filed herein accompanies this transcript.

Given under my hand and seal of office, this the 29th day of July, A. D. 1909.

[SEAL.]

T. W. ALEXANDER,
*Clerk District Court Llano County, Texas*

71 In the District Court of Llano County, Texas, Spring Term A. D. 1909.

No. 1721.

THE STATE OF TEXAS
vs.
R. H. DOWNMAN.

*Statement of Facts.*

Before Hon. Clarence Martin, Judge Presiding.

Messrs. Slator & Oatman and Knight Stith, County Attorney, Attorneys for Plaintiff.

Messrs. Gregory, Batts & Brooks and J. H. McLean, Attorneys for Defendant.

Be it Remembered that in the trial of the above numbered and entitled cause before Honorable Clarence Martin, Judge of the Thirty-third Judicial District of Texas, in the District Court of Llano County, Texas, on to-wit, the 14th day of May, A. D. 1909, the following evidence was adduced:

The parties plaintiff and defendant offered and read in evidence the following facts which were agreed to be true and considered as having been proved on the trial, as follows:

"Come now the parties to the above styled and numbered cause and for the purpose of the trial thereof, agree that the following facts are true and shall be considered as having been proved on the trial, viz:

I.

The defendant owned on January 1st, 1907, such interest in, and in respect to, the lands mentioned in plaintiff's petition as are hereinafter specified, and no other interests in, or in respect to, any of said lands, viz:

(1) He did not, as is alleged in plaintiff's petition own any interest in, or in respect to, 112 acres of the W. R. Allen Survey, Ab. No. 1358, Sur. No. 68; but did own such interests in, 72 or in respect to, 80 acres of said survey (if any) as were vested in him by the legal tenor and effect of an instrument of writing of the stereotyped form hereinafter mentioned and described.

(2) He owned no interest in, or in respect to, the following tracts of land mentioned in plaintiff's petition, except an undivided one-third of such interests (if any), in, or in respect to, said tracts as were conveyed by instruments of the stereotyped form hereinafter mentioned, viz:

(*a*) 320 acres, Sur. No. 440, Ab. No. 468, original grantee Anthony Kumenski;

(*b*) 640 acres, Sur. No. 121, Abstract No. 828, Original grantee Jas. Wilson.

(*c*) 640 acres, Sur. No. 422, Ab. No. 829, original grantee, Jas. Wilson.

(*d*) The S. ½ of the S. W. Fowler 320 acres, Sur. No. 419, Ab. No. 273;

(*e*) That certain 120 acres of the Jno. Simon survey No. 423, Ab. No. 665, described in deed from R. Collinge to R. H. Downman, recorded in Book 43, at page 473, Llano County Deed Records.

In this connection it is admitted that Chas. Schreiner of Kerr County, Texas, and the Llano Mining and Mineral Company, a private corporation, owned on January 1st, 1907, an undivided two thirds interest in such rights and privileges (if any) in, or with respect to, the five tracts of land last above mentioned as were conveyed by said stereotyped instruments; and that the deed records of Llano County so showed on said date.

(3) He did not on January 1, 1907, own any character of interest in, or with respect to, the following tracts of land mentioned in plaintiff's petition, or in, or with respect to, any portion or portions of said tracts, viz:

(*a*) 745 acres of the E. Garcia Sur. No. 477, Ab. No. 279, being that part described in a certain deed from F. Oheler and wife to R. H. Downman, recorded in Vol. 37, page 61, Llano County Deed Records.

(*b*) 175 acres of that part of 293.3 acres out of the E. Garcia Survey No. 477, Ab. No. 479, described in deed from D. Byer and wife to R. H. Downman, recorded in Book 37, page 51, Llano County Deed Records, which is situated in Llano County.

(*c*) 250 acres out of those portions of the E. Garcia survey No. 279, described in deed from F. Oheler and wife to R. H. Downman, recorded in Vol. 37, page 5, Llano County Deed Records, which is situated in Llano County.

(*d*) 50 acres out of that portion of Survey No. 477, Abstract No. 279, in the name of E. Garcia described in deed from Chas. Oehler, to R. H. Downman recorded in Vol. 37, page 58, Llano County Deed Records, which is situated in Llano County.

In this connection it is admitted that R. H. Downman had prior to January 1, 1907, conveyed to the Llano Mining and Mineral Co., a private corporation, all of the interests which he ever owned (if any) in, or with respect to, the four tracts of land last above mentioned, or any part of same, and that said conveyances were on said date duly recorded in the deed records of Llano County.

## II.

Except as hereinabove stated, R. H. Downman was on January 1, 1907, the owner of such interest (if any) in, or with respect to, each of the tracts of land described in plaintiff's petition as were conveyed to him by the instruments hereinafter mentioned, and was not the owner of any other interests in, or with respect to, said lands or any part or parts thereof.

The instruments or conveyances above mentioned are (with the

even exceptions hereinafter specified) all in stereotyped form and re all exactly similar in form and legal effect to the instrument at-ched to defendant's answer, and marked "Exhibit A"—the various stereotyped instruments only differing as to the names of the various grantors, the consideration paid or to be paid, and the description of the property intended to be affected.

The seven instances in which said instruments are not in said ereotyped form are the following, viz: Deeds recorded in Llano ounty deed records as follows: Vol. 11, pages 165, 340 and 619; ol. 39, pages 146 and 160; Vol. 40, page 420, Book 43, p. 473.

With reference to the seven instruments or conveyances last above ecified, it is agreed that they were not in the form of the stereo-ped instruments above mentioned, and that either party may in-oduce in evidence the originals or recorded copies of said non-ereotyped instruments without the necessity of filing same prior the trial among the papers of the cause.

## III.

It is admitted that each of the grantors in each of the instruments ove mentioned, respectively and voluntarily rendered for State d county taxation for the year 1907, each of the tracts of land entioned in plaintiff's petition in the manner hereinafter specified; d that all of said renditions were made by said grantors prior to e time when any of the tax assessments were made against the fendant on which the taxes claimed in this suit are predicated. is further admitted that said renditions by said grantors were cepted by the tax assessor in the form and manner that they were ade; that they were carried forward into the tax rolls as made, d that all taxes predicated thereon have been paid by said grantors. is further admitted that all of said tax renditions made by said antors, and the assessments made in pursuance thereof, are in ilar form and that either party may show the form of all of ne, by introducing in evidence any one of said renditions and essments.

## IV.

It is agreed that the Commissioners' Court of Llano County duly ssed and entered on its minutes, on June 12th, 1907, an order of the following terms, viz:

"In accordance with the advice and instructions of the Comptroller of the State of Texas, it is considered and or-ed by the court that the assessor of Taxes of Llano County, be d is hereby directed to assess for taxes all minerals and mineral hts in, upon or attaching to any and all lands in Llano County ere it is found that said minerals or mineral rights are owned by ifferent person from the owner or owners of the surface estate and to all such lands, and that said mineral and mineral rights eld and owned be assessed for taxes independent of the surface te."

t is further agreed that the tax assessments on which this suit is dicated were made in pursuance of said order; and that they

were made after the making and acceptance by the Tax Assessor of the renditions made as above stated by the grantors in all of the instruments above mentioned.

## V.

It is agreed that either party may on the trial introduce in evidence any relevant evidence from any of the county records, and that the originals of said records may be used for said purpose, without any necessity for procuring copies thereof or of giving notice as provided by law.

## VI.

It is further agreed that the Commissioners' Court of Llano County at its regular term in February, 1907, by an order of said court made and entered in the minutes of said court levied the county general and special taxes on all property in said county subject to taxation for said year; and that said order was made and entered in the manner and form prescribed by statute.

That the taxes herein sued for were assessed in the manner shown by the inventory assessment sheet or list introduced in evidence herein, were thereafter carried to and placed upon the tax rolls for the year 1907 of said county by the tax assessor of said county and that said tax rolls for said year were made up and certified to
76 by the proper officer, all of said proceedings having been done and performed in the manner and form prescribed by statute.

That the delinquent tax list of said county for taxes unpaid on delinquent on March 31, 1908, for the year 1907, in which appear the taxes sued for herein, were prepared in triplicate showing the penalties assessed against same, including the penalties sued for herein, by the Tax Collector of Llano County, Texas, and presented by him to the Commissioner's court of said County for examination and correction of errors that might appear therein.

And that said delinquent list showing the taxes and penalties sued for herein was thereafter examined and approved by the aforesaid Commissioners' Court and the three copies thereof disposed of as the law directs, and that said delinquent tax list was thereafter published for the time required by law in the "Llano News," a newspaper published in said Llano County, Texas; all of said proceedings having been done and performed in the manner and form prescribed by statute.

KNIGHT STITH, *County Attorney, and*
SLATOR & OATMAN,
*Attorneys for Plaintiff.*
GREGORY, BATTS & BROOKS, AND
J. H. McLEAN,
*Attorneys for Defendant.*

The Plaintiff offered in evidence a deed in the stereotyped form from Sarah I. Decker to R. H. Downman, which was as follows:

THE STATE OF TEXAS,
*County of Llano:*

Know all men by these presents that I, Sarah I. Decker, a femme sole, of the County of Llano and State of Texas, for and in consideration of the sum of six hundred and forty dollars to me in
77 hand paid by R. H. Downman, of which the sum of one hundred and sixty dollars is paid in cash, the receipt of which is hereby acknowledged, and the balance of said sum is evidenced by three certain promissory notes of even date herewith, for the sum of one hundred and sixty dollars each, bearing interest at the rate of six per cent per annum from date until paid to become due and payable in one, two and three years respectively, after date, made, executed and delivered by said R. H. Downman to the said Sarah I. Decker, each of said notes containing the usual contingent maturity and attorney's fee clauses. Have Granted, Sold and conveyed, and by these presents do grant, sell and convey unto the said R. H. Downman of the Parish of Orleans, in the state of Louisiana, all metals, ores, granite, rocks, stones, and other minerals, mefrom the earth, which might or could be worked for profit by underground excavations or open working, or both, and the by products of any and all such things and substances, now known to be or hereafter found to be in and upon the hereinafter described lands, together with the right to enter upon the same and search, dig and explore for such things and substances and the right to use and appropriate so much of the surface of said land as may be required for any roads, railroads, sidetracks and switches, and the construction thereof on or across said lands, to be used in the transportation of persons and any freight and property whatsoever from or to any places whatsoever, and also the right to make and construct in, on and under said lands tipples, shoats, drifts, levels, tunnels, shafts and other underground ways in which may be handled and transported anything whatsoever from or to any place whereso-ever, whether under or upon said land or elsewhere, and it is expressly agreed and understood that this conveyance passes the right to the use of so much of the surface of said land as may be required for the aforesaid preliminary exploration work and rights of way, but it is not intended to convey and this conveyance shall not be construed to convey any of said surface for the purpose of mining, re-
78 ducing, quarrying, hewing, cutting, shaping, dressing, manufacturing, disposing of, handling, preparing for market or other purposes, marketing or forwarding any of the aforesaid metals, ores, granites, rocks, stones, and other minerals and by products but any of said surface convenient valuable or important to the use and employment of any, all or a part of such things, purposes and operations, may be purchased in fee simple by the grantee, his heirs, legal representatives or assigns, as hereinafter provided. To Have and to hold the aforesaid estate and rights in and to the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said R. H. Downman, his heirs and assigns forever, and I do hereby bind my-

self, my heirs, executors, and administrators, to warrant and forever defend all and singular the aforesaid estate and rights unto the said R. H. Downman, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof. But it is expressly understood:

1. That the vendor's lien is retained against the above conveyed and described real estate and rights until the above described notes and all interest thereon are fully paid according to their face and tenor, effect and reading, when this this deed shall become absolute.

2. The grantee or his assigns or anyone representing or employed by them, or either of them, shall not permit any live stock of any character, to graze or run at large on any of the said lands belonging to the grantor or her representatives or assigns.

3. The grantee and his legal representatives and assigns, shall have the right to use any water from natural pools, springs and streams, in or on any of said surface to such an extent, and in such manner as shall not interfere with the use thereof by the owner of the surface for stock and domestic purposes, but this right on the part of the grantee, his representatives and assigns, shall not extend to wells, cisterns or surface tanks, made by the grantor or her heirs, legal representatives, or assigns, or those under whom they
79 hold, but said grantee, his heirs, legal representatives and assigns shall have the right to make tanks, cisterns and reservoirs and put down wells on, and in, said surface and shall have and enjoy the exclusive use of the water therefrom.

4. The grantor or any owner under said grantor of the surface of said lands or parts thereof, may use so much of the stone to be found on or under, the surface owned by him, as may be necessary for the construction thereon of building, fences, or other improvements for his own use.

5. No right to use any wood grown on said land shall pass by this conveyance.

6. If any openings are made in the surface of said lands by the grantee or any person under him in prospecting or otherwise which might be a menace to the safety of persons and live stock, the grantee or person making the same shall at his own expense at all times, keep such openings carefully guarded and when not at work in or on same such openings shall be by him filled up or securely covered and fenced

7. At any time after the date hereof the grantee, his legal representatives or assigns, shall have the right to purchase in fee simple so much of the surface of said lands as may be convenient valuable and important to the full use and enjoyment of all or a part of the things, purposes, and operations contemplated in the granting clause above, at the price fifteen dollars per acre for unimproved grazing lands and twenty-five dollars per acre for unimproved agricultural lands but if building and improvements be upon the lands selected for purchase hereunder by the grantee, his legal representatives or assigns, the value of such buildings and improvements shall be estimated by the then owner of the surface and mineral es-

tates in said land and failing agreement by them each shall select an arbitrator to whom shall be submitted their differences or matters in dispute, and if such arbitrators should fail to agree, they shall select an umpire to assist them and the value estimated in either of said ways shall be paid by the grantee or other purchaser hereunder, in addition to the aforesaid stipulated price per acre; the surface so purchased shall be conveyed by general warranty deed, and such purchaser, his legal representatives, before beginning operations thereon, shall enclose the same in a good and sufficient hog and stock proof fence. The lands hereinbefore referred to are situated in Llano County, Texas, and are known and described as follows: 160 acres, the John L. Kirkpatrick pre-emption patented to the heirs of J. V. D. Gossett assignee, by patent No. 348, Vol. 11, January 28, 1891, marked on the map F. 3664, and known as Survey No. 40, 160 acres, the south part of Abst. No. 75 originally granted to Edward Brune by virtue of certificate No. 533 and patented to him by patent No. 461, Vol. 48, dated April 4, 1883, and known as survey No. 185, the said 160 acres beginning at the southwest corner of the subdivision of this survey conveyed by J. F. Dancer to John Rabb, a stone mound on the east bank of a creek from which a post oak fourteen inches in diameter bears north 50½ degrees east 9½ varas and another bears south 18 degrees west 7 3-5 varas; thence south 718 varas; to the southwest corner of said Brune survey a post oak bears south 42¾ degrees west 33 varas, and another bears north 41½ degrees west, 20¼ varas; thence east with the south line of said survey 1258 acres to a stake and mound for the southeast corner of said survey; thence north with the east line of said survey 718 varas to the southeast corner of said Dancer subdivision, a stone mound from which a mesquite bears north 36½ varas; and another bears south 57 degrees west 22 varas; thence west 1258 varas to the place of beginning.

In testimony whereof witness *our* hands this 10th day of July, A. D. 1905.

SARAH I. DECKER

THE STATE OF TEXAS,
*County of Llano:*

Before me, the undersigned authority, on this day personally appeared Mrs. Sarah I. Decker, a feme sole, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office, this 10th day of July, A. D. 1905.

[SEAL] JOHN C. OATMAN,
*Notary Public, Llano County, Texas.*

Filed for record Jan. 18th, A. D. 1906, at 3 o'clock p. m. and recorded Jan. 26th, A. D. 1906, at 10:45 o'clock A. M.

T. W. ALEXANDER,
*Clerk County Court, Llano County, Texas.*
By H. F. McLEOD, *Deputy.*

The plaintiff next offered in evidence a deed from Mrs. Emily Marshall et al. to R. H. Downman, as follows:

THE STATE OF MASSACHUSETTS,
*County of Norfolk:*

Know all men by these presents: That I, Mrs. Emily H. Marshall (formerly Emily H. A. Hughes) joined by my husband Ainsly Marshall of the town of Milton, County of Norfolk, State of Massachusetts, for and in consideration of the sum of Sixteen Hundred Dollars ($1600.00) to me in hand paid and secured to be paid by R. H. Downman, as follows, to-wit: Four hundred dollars ($400.) cash, the receipt of which is hereby acknowledged and three promissory notes in writing of even date herewith, each for the sum of four hundred dollars (400) due and payable to the order of said Mrs. Emily H. Marshall at Boston, Massachusetts, in one, two and three years respectively from date until paid at the rate of six (6) per cent per annum, the interest payable annually, signed by the said R. H. Downman and containing the usual contingent ten per cent attorney's fee clause and each of said notes containing a stipulation to the effect that failure to pay the principal, or any installment of interest on either of said notes when due shall at the option of the holder of said notes mature the same, have granted, sold and conveyed and by these presents do grant, sell and convey unto the said R. H. Downman of the Parish of Orleans, State of Louisiana, the following described tract or parcel of land, to-wit: 160 acres
82 of land situated in Llano County, Texas, known as Survey No. 17, Abstract No. 875, originally granted and patented to Thomas Williams on the 4th day of January, 1864, by letter patent Patent No. 275, Vol. 16 and which is described by metes and bounds as follows: to-wit: Beginning at the southeast corner of the Schultz survey No. 100 a stake from which a post oak bears S. 11 degrees east 10 varas another bears S. 82 degrees E. 6 varas; Thence south 950 varas to a stake from which a black jack bears S. 56 degrees W. 12 varas, another bears S. 40 degrees E. 6½ varas; thence west 950 varas to a stake from which a post oak bears S. 28 degrees W. 16 varas, another bears N. 45 degrees W. 12½ varas; thence north 950 varas to a stake from which a post oak bears N. 75 degrees W. 10 varas, another bears south 1 degree, 9 varas; Thence east 950 varas to the place of beginning. To have and to hold the above described premises together with all and singular the rights and appurtenances thereto in anywise belonging or appertaining, unto the said R. H. Downman, his heirs and assigns forever. And we do hereby bind ourselves, our heirs, executors administrators to warrant and forever defend all and singular the said premises unto the said R. H. Downman and his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

But it is expressly agreed and stipulated that the vendor's lien is herein retained against the above described land, premises and improvements until the above described notes and all interest and charges thereon are fully paid according to their face and tenor, effect and reading, when this deed shall become absolute.

Witness our hands at Milton, Massachusetts, on this the 15th day of June, A. D. 1905.

EMILY H. MARSHALL.
AINSLIE MARSHALL.

THE STATE OF MASSACHUSETTS,
*County of Norfolk:*

Before me, Henry B. Martin, a Notary Public in and for
83 the Commonwealth of Massachusetts, on this day personally appeared Ainsly Marshall, known to me to be the person whose name is subscribed to the foregoing instrument in writing, and acknowledged to me that they had signed and executed the same for the purposes and consideration therein expressed, and also came Emily H. Marshall, wife of said Ainsly Marshall, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her said husband, and having the same fully explained to her by me, she, the said Mrs. Emily H. Marshall acknowledged such instrument to be her act and deed, and declared that she had signed the same willingly for the purposes and consideration therein expressed and that she did not wish to retract it.

Given under my hand and seal of office on this the 15th day of June, 1905.

[SEAL] HENRY B. MARTIN,
*Notary Public*

My commission expired Dec. 11, 1911.

Filed for record Feb. 9, A. D. 1906, at 2 o'clock p. m. and recorded Feb. 27, A. D. 1906, at 4 o'clock p. m.

T. W. ALEXANDER,
*Clk. Co. Ct., Llano County, Texas.*
By H. F. McLEOD, *Deputy*

The plaintiff offered in evidence a deed from Mrs. C. V. Raffety et al. to R. H. Downman, as follows:

STATE OF TEXAS,
*County of Llano:*

Know all men by these presents, that, we Mrs. C. V. Raffety, a widow and Mrs. A. C. Moore, joined by her husband A. E. Moore of the County of Llano and State of Texas, for and in consideration of the sum of one thousand two hundred and eighty dollars to us in hand paid, and secured to be paid by R. H. Downman of which the sum of three hundred and twenty dollars is paid in cash, the re-
84 ceipt whereof is hereby acknowledged and the balance of said sum is evidenced by three promissory notes of even date herewith for the sum of three hundred and twenty dollars each, bearing interest at the rate of six per cent per annum from date until paid to become due and payable in one, two and three years respectively, after date, made executed and delivered by said R. H. Downman to the said Mrs. C. V. Raffety, Mrs. A. C. Moore and A. E.

Moore, each of said notes containing the usual contingent maturity and attorney's fee clauses. Have granted, sold and conveyed and by the presents do grant, sell and convey the mineral rights in and to certain tracts or parcels of land situated in Llano County, Texas, described as follows: 320 acres on Miller's Creek, a tributary of the Llano river, about seven and one half miles nort- 70 degrees east from Llano town; known as Survey No. 1, Abstract No. 124, Certificate No. 1558, originally granted to Beaty Seale and forward and patented to R. F. Roundtree by Patent No. 121 Vol. 23, dated April 27th, 1876. 320 acres of land in Llano County Texas, about seven and one-half miles north 70 degrees east from Llano town on Miller' creek, a tributary of the Llano river, said 320 acres is known as Survey No. 58, patented to Gustav Loedlker, assignee of Frederick Meckel, by letter patent No. 1014 Vol. 17, for better description of said 320 acres reference is hereby made to the record of said patent in the record of patents in the General Land Office of Texas. Together with the right to enter upon said lands for the purpose of prospecting for minerals and also for the use of a sufficient amount of the said land necessary for the purpose of mining said mineral and the right to remove from and off said land any and all mineral deposits found thereon or thereunder the grantee or his assigns agreeing not to trespass upon growing crops or grass on said land. To have and to hold the aforesaid estate and rights in and to the above described premises together with all and singular the rights and appurtenances thereto in any wise belonging to the said R. H. Downman, his heirs, executors, and administrators to warrant and forever defend all and singular the aforesaid estate rights and premises unto the said R. H. Downman, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness our hands, this the 9th day of June, A. D. 1906.

A. E. MOORE.
Mrs. A. C. MOORE.
C. V. RAFFETY.

THE STATE OF TEXAS,
*County of Llano.*

Before me, the undersigned authority, on this day personally appeared Mrs. C. V. Raffety, a feme sole, and A. E. Moore and his wife Mrs. A. C. Moore, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed and the said Mrs. A. C. Moore having been examined by me privily and apart from her said husband and having the same by me fully explained to her she acknowledged said instrument to be her act and deed and declared that she had willingly signed the same for the purposes and considerations therein stated and that she did not wish to retract it.

Given under my hand and seal of office, this the 9th day of June, A. D. 1906.

[SEAL.]

E. J. DALRYMPLE,
*Notary Public, Llano County, Texas.*

Filed for record June 18th A. D. 1906, at 10:15 o'clock a. m. and recorded June 28th, A. D. 1906, at 10:30 o'clock a. m.

T. W. ALEXANDER
*Clk. Co. Ct. Llano County, Texas.*
By H. F. McLEOD, *Deputy*

The plaintiff offered in evidence a deed from Frank Griffay to R. H. Downman, which was as follows:

THE STATE OF TEXAS,
*County of Llano.*

Know all men by these presents that I Frank Griffay of the County of Llano, State of Texas, for and in consideration of the sum of twenty-four hundred twenty-two (2422) dollars to me in hand paid and secured to be paid by R. H. Downman as follows: $605.50 cash, the receipt of which is hereby acknowledged; and $1816.50 evidenced by three promissory notes for $605.50 each, executed by R. H. Downman and payable to Frank Griffay or order, in one, two and three years respectively after date, each bearing six per cent interest per annum from date, and providing for ten per cent contingent attorneys' fees, it being expressly understood that the vendor's lien is hereby retained on the hereinafter conveyed and described property to secure the payment of said notes, have granted, sold and conveyed and by these presents do grant, sell and convey unto the said R. H. Downman of the city of New Orleans, State of Louisiana, all minerals and metals of every kind and character and all granites, marbles and all other stones of every kind and character found on or under the following described tracts or parcels of land, to-wit: Situated in Llano County, State of Texas, and being:

1st. Parts of surveys No. 222 and 223, of 320 acres each, granted to Lawrence Sailor, said parts being described as follows: Beginning at the S. W. corner of survey No. 222 a stone mound; thence east 950 varas to the S. E. corner of said survey No. 222 and the S. W. corner of survey No. 223, a stone mound. Thence north with the line of said two surveys 950 varas to a stone mound; thence east 340 varas to a stone mound; thence north 182 varas to a stone mound; thence west 340 varas to a stone mound; thence south 130 varas to a stone mound. Thence west 950 varas to the west bdy. line of survey No. 222 a stone mound. Thence south with said line 1082 varas to the place of beginning.

2nd. 160 acres, being Survey No. 68 patented to M. C. Mathews, assignee of W. R. Allen, on December 5, 1891, by patent No. 258, Vol. 24, less about 78 acres heretofore sold by me to M. M. Hargis, the deed to said Hargis is here referred to for description of said 78 acres.

3rd. 112 acres, being a part of the pre-emption grant to Prunella Parker and patented to M. M. Hargis assignee of Prunella Parker, on the 19th day of March, 1886, said 112 acres having been conveyed to me by M. M. Hargis by deed of record in Book 87 M. page 537, Deed Records, Llano County, Texas, to which said deed reference is here made for a particular description of said land.

4th. The north half of half section No. 4, J. Poitevent, certificate No. 1-400, being the same land conveyed to me, Frank Griffay, by P. C. McCoy and wife on the 27th day of Sept. 1902, to which said deed reference is here made for a particular description of said land.

5th. The south half of half section No. 4, Certificate No. 1-400, granted to J. Poitevent, being the same land awarded by the State of Texas to W. E. Fade, on the 6th day of March, 1889, and conveyed by J. W. Cate to P. C. McCoy, by deed of record in Book 34, page 564, deed records of Llano County, Texas, to which deed reference is here made for a particular description of said land.

To have and to hold the above described minerals, metals, marbles, granites and all minerals, metals and granites and stones of every kind and character found on or under said above described land unto said R. H. Downman, his heirs and assigns, forever.

Witness my hand, this the 27th day of May, A. D. 1904.

his
FRANK x GRIFFAY
mark

THE STATE OF TEXAS,
*County of Llano.*

Before me, E. J. Dalrymple, a Notary Public in and for Llano County, Texas, on this day personally appeared Frank Griffay, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 27th day of May, A. D. 1904.

[SEAL.]

E. J. DALRYMPLE,
*Notary Public in and for Llano County, Texas.*

Filed for record June 8th, 1904, at 10 o'clock A. M. and recorded June 10th, 1904, at 9 o'clock A. M.

E. H. ALEXANDER,
*Clerk Co. Ct. Llano Co., Texas.*

The Plaintiff offered in evidence a deed from R. D. Lauderdale et al., to R. H. Downman, as follows:

E STATE OF TEXAS,
*County of Llano:*

Know all men by these presents, that we, R. D. Lauderdale and s. L. Lauderdale of Llano County, Texas, for and in consideran of the sum of one thousand two hundred and eighty dollars d and to be paid to us by R. H. Downman as follows: Three dred and twenty dollars in cash, the receipt of which is hereby nowledged, three hundred and twenty dollars to be paid one year r date; three hundred and twenty dollars to be paid two years r date; and three hundred and twenty dollars to be paid three s after date with interest on each of said sums of $320.00 from

this date at the rate of six per cent per annum, interest payable annually, and for each of which deferred payments said R. H. Downman has executed to us his promissory note bearing even date herewith, have bargained and sold, and by these presents do grant, sell and convey unto the said R. H. Downman all of the metals, minerals and ores in and upon those two certain 320 acre surveys of land situate and being in the County of Llano and State of Texas, originally granted to Andreas Schreiner and patented to said Andreas Schreiner, and designated and known by surveys number 316 and 317 respectively. To have and hold the said metals, minerals and ores in and upon said land, together with all the rights, members, privileges and hereditaments thereto in any wise belonging unto him the said R. H. Downman, his heirs and assigns forever. And for the consideration aforesaid we do hereby bind ourselves, our heirs, executors and administrators to warrant and forever defend all and singular the said property hereby conveyed, together with all and singular the rights, members, privileges and hereditaments thereto in any wise belonging unto him the said R. H. Downman, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. But the vendor's lien is hereby expressly retained upon said property hereby conveyed to secure the payment of each and all of said three
89 notes and after the payment of said notes this deed shall become absolute.

Witness this the 25th day of May, A. D. 1904.

CHAS. L. LAUDERDALE.
R. D. LAUDERDALE,
By CHAS. L. LAUDERDALE.
*His Attorney in Fact.*

THE STATE OF TEXAS,
*County of Llano.*

Before me, the undersigned authority in and for Llano County, Texas, on this day personally appeared Chas. L. Lauderdale, whose name is subscribed to the foregoing instrument of writing as one of the grantors and who (the said Chas. L. Lauderdale) is personally known to me, and the said Chas. L. Lauderdale, acknowledged to me that he executed the said instrument of writing for the purposes and considerations and in the capacity therein expressed.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this the 26th day of May, A. D. 1904.

[SEAL.] JOHN C. OATMAN,
*Notary Public in and for Llano County, Texas.*

Filed for record June 11th, 1904, at 6:30 o'clock p. m. and recorded June 14, 1904, at 4:40 o'clock p. m.

E. H. ALEXANDER,
*Clerk Co. Ct. Llano Co., Texas.*

The plaintiff offered in evidence a deed from J. P. Gilshrist to R. H. Downman, which was as follows:

THE STATE OF TEXAS,
*County of Llano:*

Know all men by these presents: That I, J. P. Gilchrist, of the County of Warren, in the state of Ohio, but now temporarily sojourning in the county of Llano, in the State of Texas for and in consideration of the sum of four thousand four hundred eighty ($4480.00) dollars to me in hand paid by R. H. Downman, by the said Downman advancing the purchase price of the hereinafter described property as recited in deed to Edna Amelia Ranger, 90 of even date herewith and which is delivered as a part hereof the receipt of which is hereby acknowledged in full, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said R. H. Downman of the Parish of Orleans, in the State of Louisiana, all the mines and minerals in and upon those two certain tracts of land situated in Llano County, Texas, and hereinafter fully described together with the rights of ingress and egress, and all other mining and mineral rights and privileges conveyed to me by deed executed by Edna Amelia Ranger, of even date herewith and above referred to, the consideration for which deed was advanced by the said Downman and the deed was taken in my in trust for him, and it is my intention to hereby convey to the said Downman all rights, title, and interest, legal and equitable which may have vested in me by virtue of said deed, in and to said lands and the mining and mineral rights and privileges and upon the same, which lands are more particulary described as follows:

First. 640 acres of land patented to H. Koenigsberger, assignee of Houston & Great Northern Railroad Company on March 16, 1874 by patent No. 233, Vol. 23, by virtue of certificate No. 3/468, known as Survey No. 15, and abstract No. 401.

Second. 640 acres of land patented to H. Koenigsberger, assignee of the Houston & Great Northern Railroad Co. on March 16, 1874, by Patent No. 232, Vol. 23, by virtue of certificate No. 2/467 known as Survey No. 13, and abstract No. 400.

To have and hold the above described mines and minerals, rights and privileges together with all and singular the rights and appurtenances thereto in anywise belonging to the said R. H. Downman, his heirs and assigns forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said mines and mineral rights and privileges and upon said premises unto the said R. H. Downman, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under me.

Witness my hand at Llano, Texas, on this the 5th day of September, A. D. 1905

J. P. GILCHRIST.

STATE OF TEXAS,
*County of Llano:*

Before me, the undersigned authority, on this day personally appeared J. P. Gilchrist, known to me to be the person whose

name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, at Llano, Texas on this the 11th day of September, A. D. 1905.

[SEAL.] J. H. McLEAN,
*Notary Public, Llano County, Texas.*

Filed for record Sept. 11, A. D. 1905, at 11 o'clock a. m. and recorded Sept. 14, A. D. 1905, at 8 o'clock a. m.

T. W. ALEXANDER,
*Clk. Co. Ct. Llano Co., Texas.*
By H. F. McLEOD, *Deputy.*

The plaintiff offered in evidence a deed from R. Collinge to R. H. Downman, which was as follows:

THE STATE OF TEXAS,
*County of Llano.*

Know all men by these present: That I, R. Collinge, acting herein by and through my attorney in fact, N. J. Bahn of the County of Llano and State aforesaid, for and in consideration of the sum of three thousand and five hundred dollars to me in hand paid by R. H. Downman, the receipt whereof is hereby acknowledged, have granted, sold and conveyed and by these presents do grant, sell and convey unto the said R. H. Downman of the Parish of Orleans, in the State of Louisiana, the following described real estate in the County of Llano, in the State of Texas particularly described as follows: an undivided one-third interest in and to

92 First: That part of the Allen Jeffries survey No. 418, beginning at the southwest corner of said survey and running thence north 1764 varas to a stake and pile of rocks from which a post oak bears south 48 degrees east 10 varas, and another post oak bears south 37 degrees west 10 varas; thence east 672 varas to a huckleberry from which a pecan bears south 33 degrees west 12 varas and a hackberry bears north 82 degrees west 15 varas; thence south 1723 varas to the south bank of the Llano river; thence up said river to the place of beginning, saving and excepting from the operation of this conveyance that certain 32 2-5 acres of land in the southwest corner of said survey, sold to Phillip Shein, and conveyed to him by deed recorded in Book 29, at page 110, of the deed records of said Llano County and particularly described as follows: beginning at the southwest corner of said Allen Jeffries survey; thence running down the Llano river with its meanders 400 varas to a stake from which bears a double pecan tree south 67 degrees west 4 3-5 varas, and an elm bears north forty degrees west 11 varas; thence north 20 degrees west 800 varas to a stone mound from which bears a post oak stump south 45 degrees east 1 vara, and a small mesquite bears south 42 degrees west 12 varas; thence west 72 varas to a point from which bears a post oak 10 inches in diameter north 62 degrees west 5 varas; thence south with the west

line of said Jeffries survey 837 varas to the place of beginning; excepting also from the operation of this conveyance the right of way of the Austin and Northwestern Railroad, now the Houston & Texas Central Railroad, now established, open and running through said parcel of land.

Second. That part of the John Keating survey No. 117 beginning at its southwest corner, and running thence north two degrees and 2 minutes east with the east line of said Keating survey 1866 varas to a stone mound from which a black jack bears north 78 degrees west 11½ varas, and a post oak south 73½ degrees east 10½ varas thence west 679 varas to a stake in the west line of said Keating survey, from which bears a mesquite south 8 degrees west 13½ varas and a post oak south 87½ degrees west 8 3/10 varas; thence south 2 degrees west with said line 153 varas to the channel of the Little Llano Creek, thence down said creek south 43¾ degrees east 250 varas, and south 5¼ degrees west 670 varas to the mouth of said creek, thence down the Llano river with its meanders to the beginning, saving and excepting from the operation of this conveyance the right of way of the Austin and Northwestern Railroad Company, now the Houston & Texas Central Railroad Company, as now established and running across said parcel of land, and the rock quarry sold and conveyed to R. J. Harding by I. F. Weeks and M. M. Weeks by deed recorded in Book 28 on pages 537 to 539 of the deed records of said Llano County. Also an individual one-third interest in and to the min-erals and mineral rights in, upon and under the following described lands, situated in said county of Llano and in and to the use of such land as shall be necessary and proper in prospecting said lands, taking therefrom any and all mineral deposits found thereon or thereunder, said use to include timber for firewood of prospectors and timbering shafts, and also such wells or tanks as may be nec-essary for said purposes, said lands described as follows:

First. The Anthony Kremenski 320 acre survey, No. 120, Ab-stract No. 468.

Second. The James Wilson 640 acre survey No. 121, Abstract No. 828.

Third. The James Wilson 640 acre survey No. 122, Abstract No. 829.

Fourth. The south half of the S. W. Fowler 320 acre survey No. [illegible] Abstract No. 273.

Fifth. That certain 70 acres, a part of the John Simon survey No. 123, conveyed by S. R. Wilson and his wife Elizabeth to Richard Wooley, Jr., Murray Shipley and W. A. H. Miller by deed dated February, 1890 recorded in Book P, at page 110 to 114, of the deed records of said Llano County.

Sixth. That certain 50 acres, a part of said John Simon survey No. 123 conveyed by S. R. Wilson and his wife Elizabeth to Richard Wooley Jr., Murray Shipley and W. A. H. Miller by deed dated February 19, 1890, and recorded in Book P, at page 110 to 114, it being hereby expressly agreed and under-stood this sale and conveyance is intended to vest the said R. H.

Downman with and convey to him an undivided one-third of all the property, rights and interests acquired in and to the six tracts last above described by Charles Schreiner through and under the conveyance to him by T. J. Moore and W. J. Moore dated November 2, 1899, and recorded in said records in book 31, at page 520, and no more, and this deed is accepted subject to the right of way of the Austin & Northwestern Railroad now the Houston and Texas Central railroad now established and running across said tracts of land, which said right of way is excepted from this conveyance. To have and to hold the above described premises, property, rights and interests, together with all and singular the rights, privileges and appurtenances to the same in any wise belonging unto the said R. H. Downman, his heirs and assigns forever.

Witness my hand, this the 8th day of February, A. D. 1907.

R. COLLINGE.
By His Attorney in Fact, N. J. BALU

THE STATE OF TEXAS,
*County of Llano:*

Before me, the undersigned authority, on this day personally appeared N. J. Balu, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the attorney in fact for R. Collinge for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 8th day of February, A. D. 1907.

[SEAL] SAML SPEARS
*Notary Public, Llano County, Texas.*

Filed for record Feb. 26, A. D. 1907, at 9 o'clock A. M. and recorded Feb. 28, A. D. 1907, at 3 o'clock P. M.

T. W. ALEXANDER,
*Clk. Co. Ct. Llano Co., Texas.*
By H. F. McLEOD, *Deputy.*

65 The Plaintiff offered in evidence a deed from G. S. Gray to R. H. Downman, which was as follows:

THE STATE OF TEXAS,
*County of Llano:*

Know all men by these presents That we, G. S. Gray and wife A. E. Gray of the County of San Saba in the State of Texas, for and in consideration of the sum of one thousand two hundred and eighty ($1280.00) dollars to us in hand paid, and secured to be paid, by R. H. Downman, of which amount the sum of Three hundred and twenty ($320.00) dollars is paid in cash, the receipt of which is hereby acknowledged, and the balance of said sum is evidenced by three promissory notes, of even date herewith, for the sum of three hundred and twenty ($320.00) dollars each, bearing interest at the rate of six per cent per annum from date until paid, to be-

come due in one, two and three years respectively, after date, made, executed and delivered by said R. H. Downman to said G. S. Gray, containing the usual contingent maturity and attorney's fee clauses, have granted, Sold and Conveyed and by these presents do grant, sell and convey unto the said R. H. Downman of the Parish of Orleans, in the state of Louisiana, all our right, title and interest in and to the following described lands situated in Llano County, Texas, our said right, title, and interest being all the mineral in and upon said lands, with the right of ingress and egress and the right to mine and remove any and all minerals from said lands, being all the title and rights reserved in a deed executed by R. W. Gray to B. F. Johnson, dated June 23, 1899, and recorded in book 31 on page 237, of the deed records of Llano County, and which said title and rights were conveyed by said R. W. Gray to G. S. Gray by deed dated April 17, 1905 and recorded in Book 40, on page 159 of the Deed Records of Llano County. The lands hereinbefore referred to, the mineral in and upon which is hereby conveyed as aforesaid are more particularly described as follows

First. 320 acres of land originally granted and patented to J. A. C. Shuster on January 30, 1856 by patent No. 771, Vol. 12 known as Survey No. 602 and abstract No. 672.

Second. 320 acres of land originally granted and patented J. A. C. Shuster on January 30, 1856, by Patent No. 772, Vol. 12, known as Survey No. 603, and abstract No. 673. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said R. H. Downman, his heirs and assigns, forever. And we do hereby bind ourselves, our heirs, executors and administrators to warrant and forever defend, all and singular the said premises, minerals and rights unto the said R. H. Downman, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof. But it is expressly agreed and stipulated that the vendor's lien is retained against the above described property, mineral and rights, premises and improvements, until the above described notes, and all interest thereon, are fully paid, according to their face and tenor, effect and reading, when this deed shall become absolute.

In testimony whereof witness our hands, this the 20th day of June, A. D. 1905.

G. S. GRAY.
AMANDA F. GRAY.

THE STATE OF TEXAS,
*County of Llano:*

Before me, the undersigned authority, on this day personally appeared G. S. Gray and his wife A. F. Gray, known to me to be the persons whose names are subscribed to the foregoing instruments and acknowledged to me that they each executed the same for the purposes and considerations therein expressed. And the said A. F. Gray, wife of said G. S. Gray, having been examined by me privily and apart from her husband, and having the same by me fully ex-

plained to her, she, the said A. F. Gray, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

97 Given under my hand and seal of office, this the 29th day of June, A. D. 1905.

[SEAL.] A. H. WILBERN,
*Justice of the Peace and ex-Officio Notary Public in and for Llano County, Texas.*

Filed for record Jan. 18, A. D. 1906, at 3 o'clock p. m. and recorded Feb. 1, A. D. 1906, at 12 o'clock a. m.

T. W. ALEXANDER,
*Clk. Co. Ct. Llano Co., Texas.*
By H. F. McLEOD, *Deputy.*

The plaintiff and defendant agree that the rate of taxation fixed for general county purposes for the year 1907 is $.25 on the $100 valuation; the rate of taxation for general road and bridge purposes for the year 1907 is fixed at $.10 per $100 valuation; the rate of taxation to create a sinking fund, the payment of interest and to create a sinking fund for the payment of outstanding Llano County Courthouse and jail refunding bonds is fixed at $.10; for payment of outstanding Llano County Bridge refunding bonds taxation of $.10 on the $100 valuation.

The plaintiff offered in evidence the assessment of the first tract of land of R. H. Downman in the "Inventory of Unrendered Property" of said R. H. Downman and the defendant admitted that the assessment made against each one of these tracts of land mentioned in the petition was similar to the one first shown on the assessment. Said first heading of the "Inventory of Unrendered Property" was as follows:

Inventory of Unrendered Property.

Assessed by J. A. Cone, Assessor of Llano County for the Year 1907 under Art. 5119 and 5126 Revised Statutes 1895.

98 Owner (if unknown say unknown) R. H. Downman. To assess real property for previous years a certificate from Comptroller is required (Art. 5126 R. S.) except in case of voluntary renditions. Assess no real property for years prior to 1885. Assessment of personal property for back taxes can only be made for two years past (Art. 5121 R. S.).

Assessment of "timber only" must be placed on separate sheet. Chapter 32, Acts 29th Legislature.

Real Estate, Mineral Rights Only.

Abstract No. 175, Original Grantee, C. R. Diedrich, Acres Rendered, 320; Value, 160.

I, J. A. Cone, Tax Assessor of Llano County, do hereby certify that this inventory contains a true and correct list of property subject to taxation in this county for the year or years designated, known as the property of R. H. Downman (if owner is unknown say unknown) which property has been listed to me for assessment for the year or years designated, and I hereby assess said property for the year or year 1907 in compliance with the laws regulating the assessment of unrendered property.

J. A. CONE,
*Tax Assessor, Llano County.*

The plaintiff and defendant agreed that the taxes sued for in the plaintiff's petition have not been paid by Mr. Downman and that he has refused to pay them.

Plaintiff Rests.

J. A. CONE, on behalf of the defendant, having been duly sworn, on direct examination by Judge Brooks, testified in substance as follows:

99 My name is John Cone. I am the Tax Assessor of this county. I recognize this paper (indicating) It is an original record of my office.

The defendant here offered in evidence the paper thus identified being the "Inventory of Property" of A. J. Bauman, as follows:

*Inventory of Property Owned by A. J. Bauman and Rendered for Assessment of Texas for the Year 1907 to J. A. Cone, Assessor of Llano County, State of Texas.*

Assessment of "timber only" must be placed on separate sheet. Chapter 52, Acts 29th Legislature.

Real Estate.

| Abstract No. | Cert. or Scrip. No. | Survey No. | Original grantee. | Acres rendered. | Value. |
|---|---|---|---|---|---|
| 249 | 167 | 184 | Fisher & Miller | 288 | 1050 |
| 250 | 167 | 132 | " | 308 | 1030 |
| 815 | 296 | 92 | A. Vogt | 320 | 960 |
| 1122 | ... | 24 | R. Bauman R. M. | 160 | 320 |
| 1487 | ... | 888 | M. L. " on mountain | 96 3 5 | 200 |
| 1424 | ... | 17 | M. L. " | 160 | 320 |
| 1423 | ... | 16 | H. C. " Taylor Holler | 160 | 320 |
| 854 | 507 | 51 | F. W. Wrede | 160 | 320 |

| | | | | | |
|---|---|---|---|---|---|
| 200 | 899 | 98 | L. Ethrop | 320 | 960 |
| 199 | 899 | 97 | " | 320 | 960 |
| 1026 | 1328 | 3 | E. & L. R. R. Co. | 640 | 1920 |
| 1460 | ... | ... | W. D. Wright | 35 | 105 |
| 260 | 502 | 85 | C. Fix | 129 | 385 |
| 261 | 502 | 86 | " | 129 | 385 |
| 769 | 64 | 1 | S. F. L. W. Co. | 160 | 480 |
| 578 | ... | 16 | D. F. Owens | 160 | 640 |
| 693 | 297 | 93 | A. Strauss | 320 | 960 |
| 727 | 993 | 53 | F. Shenk | 79 3/4 | 240 |
| 309 | 4 | 131 | Gerring Co. | 85 | 240 |

100 THE STATE OF TEXAS,
*County of Llano:*

I, A. J. Bauman, do solemnly swear (or affirm) that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name for myself in this county, subject to taxation in this county, and personal property not in this county subject to taxation in this County by the laws of this State, on the first day of January, A. D. 1907, and that I have true answers made to all questions propounded to me touching the same, so help me God.

A. J. BAUMAN

Subscribed and sworn to before me this the 23 day of May, 1907

J. A. CONE,
*Tax Assessor Llano County.*

Examination continued: I recognize this paper which you hand me. I wrote that "mineral rights only" at the head of that document. I remember the circumstance of the Commissioner's court in June passing an order directing me to assess certain mineral rights in the county. I made out that list in pursuance of that order. I had this list made out and submitted it to the Commissioner's Court sitting as a Board of Equalization. As to whether they entered an order after it was submitted to them approving it, my recollection is they approved it along with the balance of the inventory that I taken during the year. With reference to the date of their approval of that inventory these words "mineral rights only" were not written on there at the time they approved it. I wrote those words at the time I made the assessment; that was before they approved it. In regard to how I proceeded to make the assessment and gain the information to make it with after the Commissioner's Court passed this order, a good deal of that information I got from different parties, most of it I went to the Clerk's office and searched the records. I was searching the records to see who owned the mineral rights separate from those who owned the surface rights, that was what I was trying to see. In making out this list I was governed as
101 to whether a man's name or property should appear on it by the circumstance as to whether or not he owned the mineral rights separate from the surface estate. In making this list I did

not include any of the land owners in Llano County who owned the mineral rights too. I took from the deed records a list of those who owned the mineral rights in lands of other people and did not own the surface rights. I said I got most of the information from the records, most of it. In regard to what was the character of that information I got from other parties, well, people would frequently come to me and ask me if we were going to assess the mineral rights where they had been bought by other parties. Numbers of these people would tell me who owned the mineral rights, who they had sold to. My inquiry was directed to the ascertaining of whether or not individuals had sold the mineral rights separate from the surface estate. It was not directed as to whether there was minerals on the different tracts of land, I made no notice of that. My assessment as made under the direction of that order simply selected from the various tracts of Llano County those tracts in which the mineral rights had been sold. I assessed these mineral rights where they had been sold by the owners of the surface estate but did not assess them where they had not been sold. Where the mineral rights had not been sold, where the same owner owned the mineral rights I did not make any separate assessment. As to why I made this distinction, well, in the first place, when I made the original assessment like this, of course, I assessed the land of the country as grazing and farming lands as they were at that time. Of course when this order was passed I simply went through the records to find out where the mineral rights and interests in the land had been conveyed. In other words, I followed that order literally. That order directed me to assess the mineral rights against those persons who held the mineral rights separate from the surface estate. In regard to how I classed the lands of Llano County for the year 1907, speaking of agricultural and grazing lands as distinct from town property, why the lands in 1907 were classed principally—they were in two classes, that is the grazing lands of the country were in two classes and of course the farming lands were in about two classes—only about four classes. The average pasture land of the country was valued at three dollars per acre, and the other class was valued at two dollars per acre straight through. Three dollars was the highest in 1907. About whether I changed the valuation against owners when I made these additional assessments when prior to the time the Commissioner's Court had passed this order directing me to assess the mineral rights I had already assessed against the owners the taxes on the same land, no. I let it stand just as it was. The majority of the owners had already rendered their lands for taxes and I made no reaction to the owners of the fee simple title by reason of the fact that they had sold the mineral rights. In regard to how I arrived at the valuation of the mineral rights, well, of course that year, 1907, we weren't undertaking to comply fully with what we call the full condition law at present. And as I was uncertain as to just what these values were I undertaken to place some small valuation, in other words there was a good deal of property assessed at something like from twenty-five to fifty per cent of what was considered its

market value at that time. Of course, in assessing these mineral rights, knowing that the most of them had been bought at about two dollars per acre I decided that about fifty cents an acre would be possibly about the proper value to place on them at that time. As to whether I mean taking the same basis of the valuation of the mineral rights as I adopted for other properties in the country, I did not adopt the same basis as I did for other property because I was uncertain as to what the mineral rights ought to be. At any rate I adopted fifty cents as being a just value at that time. The valuation was not a dollar and a half in 1907, it was fifty cents in 1907. In 1908 we assessed same property at a dollar and a
103 half.

On cross-examination by Judge Slator, J. A. CONE testified in substance as follows:

In reference to whether I say that in estimating the value of these rights I found from the deeds that the prices that had been paid for these rights that were purchased by Mr. Downman, was two dollars an acre, well I won't say that I got that exactly from the record; I have heard a number of individuals state that they sold for two dollars per acre. I don't recollect just what the deeds did state as to the consideration. I can't recall any particular deed that I examined as to the valuation per acre. I did in fact for the year 1907 render these mineral rights for fifty cents per acre. I only had knowledge in a general way during the time that I was making the assessments of the owners of the rights other than such as were conveyed to Mr. Downman that many of these lands had had the mineral rights conveyed off of them. The parties rendering the lands informed me that they had conveyed the mineral rights of the lands when they made their renditions; there was a number of them told me they had sold the mineral rights. The estimate that I took from the owners of the land, the price at which they rendered the land was fixed exclusively with reference to its value as farming and grazing land and for those purposes. In making that rendition that was made prior to this order of the Commissioner's court that was referred to when I went back and assessed the mineral rights, I did not take into consideration the surface rights of those lands in any way. I was elected Tax Assessor in 1902 and this is my fourth term. I have held the office continuously since 1902. In my assessments prior to 1907 I did not take into consideration the mineral rights in accepting the assessment from individuals.

On redirect examination by Judge Brooks, J. A. CONE testified in substance as follows:

I said at the time renditions were being made for the 1907
104 taxes some individuals who had sold their mineral rights in rendering their lands stated to me that they had sold their mineral rights. Not all of them did that. I could not say how many of them did that; there was quite a number of them. A number of them claimed they had sold the interest and they thought they ought to have the lands reduced on that account. I made no difference as to that; I made no distinction at all.

Recross-examination of J. A. CONE by Judge Slator, in substance as follows:

I simply accepted them with reference to their value for grazing and farming purposes.

R. H. DOWNMAN on his own behalf, having been duly sworn, on direct examination by Judge Brooks, testified in substance as follows:

My name is R. H. Downman, and I lived in New Orleans, Louisiana. My residence on January 1st, 1907, was New Orleans, in the State of Louisiana—the Parish of Orleans. I went over the list of land mentioned in plaintiff's petition casually, I did not do it particularly. There does not exist on any of these lands developed mines or known deposits of minerals capable of being sold at a profit that I know of. I have been trying to find that out. In regard to what is the state of these lands involved in this suit as to development, not referring to the Iron Mountain which I own in fee simple, there has been no effort towards development to find out what is there outside of Professor Badu digging one or two pits on what is known as Section 13 of the Parkhill piece. At the time I purchased these mineral rights, the different rights the deed convey, I knew very little about the lands as to whether they contained mineral of the character specified in the deeds, except it was generally understood that there was showing of mineralization at some points. I mean by a showing of mineralization, there would be float, the lands would be discolored—the iron stain was about the only thing. It don't always follow that that showing will show a commercial deposit of ore. In regard to whether these tracts of land mentioned in the plaintiff's petition are situated in one solid piece of land or are scattered indiscriminately throughout the country, they are really in a solid body lying north of the Llano river, from here north, what is known as the Olive mine west to the Bauman tract, from here to the San Saba line. I said that some of these tracts of land show evidence of mineralization but these tracts do not constitute the only ones in the county that show such evidences; I know a good many that I have no interest in at all that show just exactly the same. You can find land showing just exactly the same as far as minerals are concerned anywhere in this county. I have never sold a dollar's worth of minerals or rocks of the character mentioned in the deeds from these lands at a profit. I don't know how much of that character does exist in this county; I don't know whether any exists or not. Some of these lands are situated contiguous to the Iron Mountain tract. A good many of them are situated within a radius of three miles of the Iron Mountain tract. I cannot give you an idea of what percentage of these lands show evidence of mineralization because personally I have not been on I don't suppose a tenth of the land. Only a part of that tenth that I have been over show the evidences I spoke of. Roughly speaking only a small per centage of the tracts of land that I have been over show evidences of mineralization. Take a tract of a hundred and sixty acres and there would be a lead that runs through there that

shows iron stain but probably there would be a very small percentage of that hundred and sixty showing that evidence—probably not ten per cent of it would show that evidence of mineral. Not ten per cent of the tract which contains that would bear that evidence. In regard to whether of the tracks that I have seen there are many of them that bear no evidence of mineralization other than what the common ordinary run of the country bears, well, I can illustrate that by taking the Fowler tract of land that lies immediately east of Iron Mountain, which I think is involved in this suit. I
106 have been through that recently and there is no evidence of mineralization even from stain on that tract of land.

On cross-examination by Judge Slater, R. H. DOWNMAN testified in substance as follows:

This land as it is situated in that part of Llano County where it is contains one of the best outeroppings of iron that are known to exist in Llano County; its reputed outeroppings are as good or better than any in the county although I don't know that of my own knowledge. I believe it is a fact that within my knowledge and information the finest surface outeropping of iron of the finest quality and greatest quantity which is shown anywhere in Llano County is at Iron Mountain. Most of these lands are not situated in the same portion of the county and supposed to be along the same leads of ore as the Iron Mountain—not the same lead. If the geologist is correct in tracing the veins there it is not one of these veins of the Iron Mountain—in other words what I mean by that is the Iron Mountain is on one vein and the Olive is on another. They are entirely distinct veins of ore, that is the theory. The land was purchased because of these outeroppings of ore found along the same, and adjacent territory. I paid less than two dollars and acre for some of these rights as shown by the deeds. I paid less than two dollars an acre for some of it. I bought some at a dollar and a half an acre. None of it I paid less than a dollar and a half, very little, if any. Most of it was paid for at the rate of two dollars an acre.

N. J. BADU on behalf of the defendant, on direct examination by Judge Brooks, testified in substance as follows:

My name is N. J. Badu. I came here to Llano County in December, 1891. Since I have resided in Llano I have been in the mining business and real estate. I represented R. H. Downman in making the purchases of the rights conveyed by the instruments mentioned in plaintiff's petition. I acted as agent in procuring all of
107 these conveyances. As to whether I am acquainted generally throughout Llano County with the mineral indications, I am not a geologist but I have given a great deal of attention to this since I have been here. I have been going about the country a great deal. In regard to how the lands mentioned in plaintiff's petition compare with the other lands in *in* Llano County with reference to the appearance of mineral deposits or deposits of rock capable of being mined and sold at a profit, in my opinion there is no difference whatever in all the county, what we call the granite basis—

they are all the same. I am not familiar with a great many of the tracts of land mentioned in plaintiff's petition; in fact I have not been on a great many of them. In regard to whether any of those lands so far as I know have been prospected or developed for minerals or any other substance mentioned in the deeds, I have done some work on the Parkhill, about twelve feet down and also on section 13, that is south of Iron Mountain. That is all the work that has been done. At the Parkhill we found some very good float and I got some men and went down but we could not find ore at all like the float was. It turned into small bands of iron interjected in the granite and of course I quit work at the Parkhill. At section 13 it was exactly the same thing although the float was very good. The work was stopped because I did not think there was anything there. Outside of the work on those two tracts that I have mentioned there has been no development or prospecting. I will state to the court that no minerals or rocks of the character mentioned in those conveyances have been sold by Mr. Downman or by me from any of these lands. I don't know of one place on any of these lands where minerals or rocks exist in commercial quantities, that is such that can be sold at a profit. As to how long my experience in examining lands and with reference to their possible production of minerals has extended over, I began in the middle of 1894 and I have not been doing anything else since that time. With reference to how it can be ascertained, having in mind the lands of Llano County with which I am acquainted, and by what methods whether they contain deposits of minerals in commercial quantities or not, what one has to do to find out, you have to do a great deal of diamond drilling and a great deal of shafting to find out if there is any veins of any minerals or any deposits of ore. That is the only way that you can find out how it can be demonstrated. About whether I know of any other method for ascertaining the existence or non-existence of metals or substances of that character mentioned except the methods that I have enumerated diamond drilling and shafting, I will say that I have been with a great many expert geologists and mining men who came to Llano to look up the whole of Llano County. In addition I have made some trips through countries where it looked about like Llano and the only way that it can be done is to get a geologist to go and look over the country and examine the rocks and compare them with other countries and the work to be done to do that. That is all the information that I got from all those people and the only way to discover if there is any minerals there. A geologist might discover them and that is the only way in my opinion. When I mentioned having the work done I meant diamond drilling and the shafting also—also the knowledge that these men have in comparing these different countries to our country and to set one tract aside and say at once the chances are very good here or the chances are not good here and that a deposit might be found here in merchantable quantities. I am acquainted with the tracts of land mentioned in plaintiff's petition which are situated in the vicinity of the Iron Mountain tract, with a great many of them.

On cross-examinaton by Judge Slator, N. J. BADU testified in substance as follows:

I paid two dollars an acre for most of the rights acquired in the deeds, most of the lands. I don't recollect any tracts that I paid less than two dollars an acre for; maybe a small part in Gillespie County. I don't think we paid for any single tract less than two dollars. Three dollars is the highest price that we paid for any of those rights is my recollection. I paid three dollars and a
109 half for the mineral rights on the Parkhill; that was the highest that I bought. I have made a study of this matter. I have studied the country and I am also familiar and have investigated the mineral and geological reports of Llano County as made by the government—there was none made by the Government so far except the topographical map—the only reports that I studied were made by the State.

It was agreed by the parties plaintiff and defendant to this suit that the tax rolls of Llano County for the year 1907 contain tax assessments against each of the grantors in the instruments mentioned in the agreement of parties and that the lands as there shown on the tax rolls are taxed against said grantors in the same language as all other lands in the county in which there have not been any severance of the mineral and surface estates. It was also agreed that the rendition was the same with reference to all the lands whether there has been a severance of the rights or not, in other words no distinction in form.

Dr. W. B. PHILLIPS on behalf of the defendant, having been duly sworn, on direct examination by Judge Brooks, testified in substance as follows:

My name is W. B. Phillips. I am by profession a mining man, a metallurgist—mining and metallurgy. I live in Birmingham, Alabama. In asking me what education and experience I have had you take me back about thirty years. I was educated at the University of North Carolina and the schools of Mines in Fairburg of Saxony. Since that time I have been engaged in many undertakings in this country and some in Mexico, Cuba and Canada. Undertakings in connection with mining work and valuation of mining lands. At present I am investigating the commercial situation here at Iron Mountain in Llano County, about fourteen miles from here. I have examined the tracts of land contiguous to the Iron Mountain tract with reference to their containing minerals in commercial
110 quantities; I have been over all of them. If you will allow me to refer to it I have a map showing what tracts I have been over. Beginning at the northeast corner is the Wilhelm Friedrick tract, south of that is the Otto Amberg tract. South of that is part of a tract which I think formerly belonged to the German emigration company. The other tracts that I went over are the F. & M. 132, F. & M. 184, Aust Schleicker, Leopold Schultz, Thomas Williams, J. R. Albrilton, W. I. & C. I. Co., J. R. Albrilton W. I. C. I. Co. 106, F. Wrede W. I. & C. I. Co., Jo Lu Banta, W. I. & C. I. Co., 51 Ludwig Eltop. In regard to whether I examined these

tracts for the purpose of finding out whether they contained miner
als or mineral substances in commercial quantities or sufficiently a
to be capable of development and sold at a profit, you can find as
have on most of this land some iron ore float. There is a little o
practically all these tracts but I have done no work on those tract
at all. There has been no work such as pitting, trenching, or shaft
ing or any underground development of any sort by which a man
could judge. As to whether from my examination of the land
shown on the plat I can say whether they do or do not contain any
metal ores or rocks, stones or other metallic or non metallic sub
stances capable of being worked for profit by underground excava
tions or open workings or both, I have not seen anything. There
are one or two or both methods by which it can be ascertained
whether those lands contain those substances or not and that is by
shafting work and diamond drilling. That has not been done on
these tracts. My acquaintance with the lands of Llano county is
not confined to the Iron Mountain and the tracts that I have shown
on this plat. When I was director of the Mineral Survey in this
state for four years I was over a considerable part of this country, the
Iron Mountain and the marble quarries at Teich, and down here in
the neighborhood of Click and the Llano Creek neighborhood and
this part of the county generally. From my knowledge of the land-
of Llano County from the investigations that I have made as to the
character of lands that I have shown on the plat there I would say
that they do not contain any different evidences of minerals from
other lands in different *evidences of minerals from oth-*
111 *lands in other* portions of the county.

On cross-examination by Judge Slator, Dr. PHILLIPS testified in
substance as follows:

That map does not contain all the lands that are owned by Mr
Downman, the mineral rights that he has purchased in Llano
County. It embraces an area of about three miles square each way
Three miles each way around the Iron Mountain as a sort of a cen
ter. I do not know what portion of the lands that are owned by him
are embraced in that map; I don't know how much land he own
here. This map contains about five thousand acres, more or less, in
that neighborhood. I found on most of the lands I examined
shown on that map iron indications, float iron and iron stains. As
to whether from what I saw over there I can say whether there is
is not valuable deposits of iron and other minerals under the land
one can merely say what he thinks and I do not think there is.
do not think there are valuable deposits there; of course some one
else might think different. I am simply giving my opinion as an ex
pert on this land that I have examined. The only method of dem
onstrating whether there are any deposits there would be by dia
mond drilling and shafting. The only place that I have seen where
I regarded indications as favorable for the existence of commercial
deposits of iron ore are on the Iron Mountain tract.

The parties plaintiff and defendant to this cause here agreed that

the Iron Mountain tract is not one of the tracts mentioned in the petition.

I have been at the Olive mine but it is impossible to make an examination of the mine because it is full of water and has been for a number of years. I don't know of my own knowledge what work has been done on that mine.

Judge A. H. WILLBERN on behalf of the defendant, having been duly sworn, on direct examination by Judge Brooks, testified in substance as follows:

I am County Judge of Llano County and was holding that position in the year 1907. I presided over the Commissioner's Court at the time the tax rolls for the year 1907 for said County were approved. I understand what his suit is about and what the taxes are for. The other members of the Commissioner's Court and myself accepted the assessment as offered by the Court Tax Assessor for the year 1907 and we heard no evidence at all as to whether the land assessed against Mr. Downman contained minerals or not.

On cross examination by Judge Slator, Judge WILLBERN testified as follows:

We approved the assessments of the land made by the grantors of R. H. Downman and the assessment made by the Tax Assessor of Llano County of the interests of R. H. Downman at the same time and by the same act.

Defendant Rests.

The defendant by his attorney here stated to the court, with consent of the counsel for the plaintiff, that among other taxes sued for were the taxes on the land described as Abstract No. 875, Certificate No. 1, Survey No. 17, Original Grantee Thos. Williams and number of acres 160, that the instrument conveying that tract of land to Mr. Downman was one of the seven exceptions and was not in the stereotyped form; that the land was held in fee simple by the defendant and through the mistake of the attorneys for the State was sued on in this case. The parties plaintiff and defendant to this cause agreed that the taxes on this land have been paid by the defendant and that no taxes are due on it and the defendant offered in evidence the tax receipt for the year 1907, which was as follows:

113 No. 1458. Llano County, Texas.

*Total Value of all Property.*

Assessed, $12,180.

Taxes:

| | |
|---|---|
| State ad Valorem | $15.23 |
| School Ad Valorem | 24.36 |
| State and School Poll | |
| Penalty | |
| County Ad Valorem | |
| County Special | 24.36 |
| County Poll | 36.54 |
| District School | |
| Penalty | |
| Total Tax | $100.49 |

Received of R. H. Downman the sum of One Hundred & 49/100 dollars, in payment of State and County taxes for the year 1907, on personal property and the following described real estate:

| Lands. Abst. No. | Cert. Co. | Survey No. | Original grantee. | Town lots. Acres. |
|---|---|---|---|---|
| 722 | 990 | 100 | L. Schultz | 320 |
| 713 | 991 | 99 | G. Schleicher | 320 |
| 777 | 337 | 353 | Tom Sims | 50 |
| 665 | 288 | 423 | Jno. Simon | 150 |
| 875 | 1 | 17 | Thos. Williams | 160 |
| 439 | 969 | 14 | Allan Jeffries | 50 |
| 66 | 873 | 60 | A. Buehholz | 40 |

W. C. WALLACE,
*Tax Collector, Llano County, Texas.*

Jan. 31, 1908.

It is agreed that the foregoing constituted a full, true and correct statement of all the material facts adduced in evidence on the trial of the above entitled and numbered cause.

KNIGHT STITH,
*County Attorney of Llano County, and*
SLATOR & OATMAN,
*Attorneys for Plaintiff.*
GREGORY, BATTS & BROOKS,
J. H. McLEAN,
*Attorneys for Defendant.*

Examined and approved:

CLARENCE MARTIN,
*Judge 33rd Judicial District of Texas.*

114 THE STATE OF TEXAS,
*County of Llano:*

I, T. W. Alexander, Clerk of the District Court of Llano County, Texas, do hereby certify that the above and foregoing is the original Statement of Facts, filed in said cause No. 1721, The State of Texas, v. R. H. Downman, on the 18th day of June, A. D. 1909.

Given under my hand and seal of office, this the 29th day of July, A. D. 1909.

[SEAL.] (Signed) T. W. ALEXANDER,
*Clerk District Court, Llano County, Texas*

Endorsed: No. 1721. The State of Texas vs. R. H. Downman. Statement of facts. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Aug. 11, 1909. R. H. Connerly, Clerk. Filed June 18, 1909. T. W. Alexander, Clerk Dist. Court, Llano Co., Texas. By H. F. McLeod, Deputy. With 4613.

115 No. 4613.

THE STATE OF TEXAS, Appellant.
vs.
R. H. DOWNMAN, Appellee.

Appeal from the District Court of Llano County.

*Opinion Court Civil Appeals*

## Opinion.

Prior to the first day of January, 1907, appellee Downman had purchased from various persons, as shown by their deeds in evidence, certain interests in and to the minerals, ores, rocks, etc. contained in the lands therein described, and popularly known as "mineral rights". The language employed in the habendum clauses of all said conveyances, except 6, was as follows:

"Have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said R. H. Downman all metals, ores, granites, rocks, stones and other minerals, metallic and nonmetallic organic and inorganic, in place or severed from the earth, which might or could be worked for profit by underground excavations or open workings, or both, and the by-products of *and* all such ores and substances, now known to be or hereafter found to be in or upon the hereinafter described lands, together with the right to enter upon the same and search, dig and explore for such things and substances; and the right to use and appropriate so much of the surface of said lands, as may be required, etc." And the other six conveyances conveyed, without any restriction, the mineral rights in the lands therein described.

Appellee did not render for taxation for said year any interest

whatever in said several tracts of land, and the taxes due thereon for said year became delinquent.

On the 12th of June next thereafter, the commissioners' court of Llano County passed and entered upon its minutes the following order, viz: "In accordance with the advice and instructions of
116 the Comptroller of the State of Texas, it is considered and ordered by the court that the assessor of taxes of Llano County be and is hereby directed to assess for taxes all minerals and mineral rights in and upon and attaching to any and all land in Llano County, where it is found that said minerals and mineral rights are owned by a different person from the owner or owners of the surface estate in and to all such lands, and that said minerals and mineral rights so held and owned, be assessed for taxes independent of the surface estate." By virtue of said order the assessor of taxes for said county assessed and listed for taxes against appellee the mineral rights so conveyed to him, as set forth in said conveyances; and thereafter presented said respective assessments to the commissioners' court for their approval, which were accordingly accepted and approved by said court, and the assessor was by them directed to place said assessments upon the delinquent tax roll, which was accordingly done by him. Thereafter, the collector of taxes for said county, in accordance with the provisions of the Act of the 25th Legislature passed at the regular session thereof, Chapter 103, pp. 132, et seq., made on the 31st day of March, 1908, triplicate lists of said lands upon which the state and county taxes for the preceding year remained unpaid, charging against the same all taxes and penalties assessed against the owner thereof, and presented the same to the commissioners' court of said county for examination and correction; and said court, upon examination, approved the same; and the collector, in accordance with said act, filed one copy with the county clerk of said county, retained one copy thereof and forwarded the other to the Comptroller with his annual settlement report. Which said corrected list was advertised and published, as required by law, and this suit was thereafter, on the 6th day of March, 1909 duly filed in the District Court of Llano County in the name of the State by the County Attorney against appellee, to enforce the collection of said taxes, interest, penalty and costs, as well as for foreclosure of plaintiff's lien on said minerals and mineral rights
117 of appellee in and to each tract described in its petition.

After a general demurrer and general denial, appellee, as shown by appellant's brief, specially answered, denying that he had any interest in certain of the lands described in plaintiff's petition; admitting, however, as to certain others, that he held an undivided interest, and asserting that as to all the others, he had duly purchased the right, privilege or license to enter thereon and to prospect for and develop, mine and sell as his own, such minerals and mineral substances as he might discover therein by prospecting, and which could be worked for profit by underground excavations or open workings or both. He likewise denied that there were any developed mines existing upon any of said tracts of land, either now or at the time of the execution of said conveyances; and also

denied that there were any minerals thereon capable of bei
developed or sold for a profit, and alleged that his purpose and i
tention in acquiring said license or privilege was merely to secu
the right to prospect said land for such mineral substances as mig
be mined and sold for a profit; that he had not as yet prospected a
of said lands, and had never examined many of said tracts; th
the same were not different in character from the average lands
Llano County; that the lands in Llano and adjoining counties a
supposed to contain valuable minerals, but no discoveries have
yet been made of mines or deposits capable of being worked at
profit. Defendant further alleged that prior to the tax assessme
made against his interest in said lands, if any, that the respecti
owners in fee of each of said tracts of land mentioned in plaintiff
petition, had rendered them for all purposes of State, county an
district taxes, which renditions had been accepted by the proper ta
officers, and that all taxes due thereon had been charged on th
tax rolls against said lands to the persons who so rendered the
for taxation, and all taxes due thereon were subsequently pai
by the owners; that after said lands had been rendered by the
respective owners for the year 1907, and said rendition
118 had been accepted and entered of record, and after said asses
ments had been reported by the assessor to the commissioners
court to be equalized, said court did, by order of July 12th, 1907
as hereinbefore set out, direct the assessor to assess for taxes al
minerals and mineral rights in and upon or attached to any and al
lands of Llano County, where said minerals or mineral rights wer
owned by persons different from the owner of the surface estate; an
that said minerals and mineral rights should be assessed for taxe
independent of the surface estate; that the tax assessor, in pursuanc
of said order and upon no other authority, thereupon entered and
made the tax assessments upon which plaintiff's suit was predicated
that in making said entries he wrote upon the assessment record
nothing to indicate that taxes were intended to be thereby assessed
against any other or different interest in said land for the year 1907
than the entire fee simple and absolute title in same; that having
entered said rendition, the tax assessor thereupon reported the same
to the commissioners' court; that said court, without hearing any
evidence to show that said lands contained any minerals, or that the
values were in any respect enhanced by the presence of minerals,
and without any such evidence having been heard by the assessor,
approved said assessments, and ordered same to be entered on the
tax rolls. That in pursuance of said order, said assessments were
entered upon the unrendered rolls of said county; that at the
head of said assessments were written the words "mineral rights
only", and that the roll made up in the manner alleged constituted
the sole basis for the claims against defendant in the plaintiff's
petition; that in assessing said minerals and mineral rights in the
lands mentioned in plaintiff's petition, no reduction in the valuation
at which said lands had been assessed against the holders or owners
of the fee simple title was made; that in assessing all other lands
of the county for said year, in respect to which no mineral rights

had been granted by the owners of the fee simple title, t
119 officers valued the same at the same figures as the lan
mentioned in the plaintiff's petition; that said other lan
are of the same character as those mentioned in said petition; th
the same reasons exist for supposing that said other lands contain
minerals as existed for supposing that the lands mentioned in plai
tiff's petition contained minerals and that by reason of such syste
of valuation, the lands on which mineral privileges are retained
the owners of the fee were valued at a different and lower rate, f
the purposes of taxation, than the other and similar lands in whic
the mineral privilege had been conveyed to others other than th
wners of the fee; that for said reasons, said tax assessments of sai
county for said year are unequal, not uniform, arbitrarily an
systematically discriminatory against the defendant, and all othe
persons who have mineral privileges in lands of others in sai
county.

The case was tried by the court without a jury, and judgmen
rendered in behalf of the defendant, from which this appeal is taken

It was submitted to the court upon an agreed statement. Ther
is also in the record a statement of facts, and, at the instance o
appellant, the court filed its findings of fact and conclusions of law
wherein, after finding that defendant owned no interest whatever
in certain of said tracts on January 1st, 1907 by reason of previous
sales, and for other reasons, and as to certain other tracts he had paid
the taxes assessed against them, found that, with the above ex-
ceptions said Downman was on January 1st, 1907 the owner of
such interest, if any in or with respect to each of the tracts of land
described in plaintiff's petition as were conveyed to him by the
instruments hereinbefore mentioned, and was not the owner of
any other interest in or with respect to said lands or any part or parts
thereof; that all of said conveyances were exactly similar in form
and legal effect, only differing as to the names of the respective
grantors, the consideration and the description of the lands con-
veyed; that each of the grantors in all of said instruments vol-
untarily rendered each of the tracts of land mentioned in
120 plaintiff's petition for State and County taxes for the year
1907, in the manner hereinafter specified. All of said
renditions were made by said grantors prior to the making of any
of the tax assessments against the defendant on which the taxes
claimed in this suit are predicated. Said renditions by said grantors
were accepted by the tax assessor in the form and manner that
they were made; they were carried forward into the tax rolls as made,
and all taxes predicated thereon have been paid. All said renditions
made by said grantors, and the tax assessments in pursuance thereof
are in similar form and are similar in all respects to the rendition
and assessment of the lands of A. J. Bauman, one of said grantors,
which rendition and assessments are as follows:

"*Inventory of Property Owned by A. J. Bauman and Rendered for Assessment of Taxes for the Year* 1907 *by Owner to J. A. Cone, Assessor of Llano County, State Taxes.*

Assessment of 'Timber only' must be placed on separate sheet. Chapter 52, acts of Twenty-ninth Legislature.

## Real Estate.

| Abstract No. | Cert. or Scrip. No. | Survey No. | Original grantee. | Acres rendered. | Value. |
|---|---|---|---|---|---|
| 249 | 167 | 184 | Fisher & Miller | 288 | 1650 |
| 250 | 167 | 132 | Fisher & Miller | 308 | 1030 |
| 815 | 296 | 92 | A. Vogt | 320 | 960 |
| 1122 | ... | 24 | R. Bauman, R. M. | 160 | 320 |
| 1487 | ... | 888 | M.L.Bauman, on mountain | 96 3 5 | 200 |
| 1424 | ... | 17 | M. L. Bauman | 160 | 320 |
| 1423 | ... | 16 | H. C. Bauman | 160 | 320 |
| | | | Taylor Holier | | |
| 854 | 507 | 51 | F. W. Wrede | 160 | 320 |
| 200 | 899 | 98 | L. Ethrop | 320 | 960 |
| 199 | 899 | 97 | L. Ethrop | 320 | 960 |
| 1026 | 1328 | 3 | E. & L. R. R. Co. | 640 | 1920 |
| 1460 | ... | ... | W. D. Wright | 35 | 105 |
| 260 | 502 | 85 | C. Fix | 129 | 385 |
| 261 | 502 | 86 | C. Fix | 129 | 385 |
| 769 | 64 | 1 | S. F. L. W. Co. | 160 | 480 |
| 578 | ... | 16 | D. F. Owens | 160 | 640 |
| 121 | | | | | |
| 693 | 297 | 93 | A. Strauss | 320 | 960 |
| 727 | 933 | 53 | F. Shenk | 79¾ | 240 |
| 309 | 4 | 131 | Gerring Co. | 85 | 240 |

And each of said grantors in rendering said lands for taxation listed same as "real estate" and did not employ any language indicating an intention to exclude or except from their rendition as made any mineral rights or other interest whatever in said lands. They each in making renditions wrote therein the name of the owner of the land, the abstract number, the number of the survey, the name of the original grantee, the number of the certificate, the number of acres and the value of the land, in the manner and form prescribed by statute for the rendition of real estate. Said renditions as made were accepted by the tax assessor, and were approved by the Board of Equalization. The tax rolls, as made up and predicated upon said renditions and assessments are in the form prescribed by the statute for making up such rolls, showing taxes due on real estate, where the same has been rendered for taxation by the owners, and do not in any way or by any language indicate an intention to exclude from the taxes shown to be due any interest in the lands listed

thereon. At the same time of approval of renditions of the grantors of R. H. Downman there were submitted to the commissioners' court approving the same, the tax assessments made as hereinafter stated by the tax assessor of Llano County against R. H. Downman contained in the list hereinafter referred to and on which this suit for taxes is predicated, which said tax assessments against said R. H. Downman were at the same time and cotemporaneously with the assessments against said grantors approved by said commissioners' court.

On July 12th, 1907 (after the tax renditions by said grantors had been made and accepted by the tax assessor, as above stated) the commissioners' court of Llano County passed and had entered on its minutes an order, in the following terms (Here follows the same order of the commissioners' court as above set out.) The tax assessor of Llano County made the tax assessments on which this suit is predicated in pursuance of said order of the commissioners'
122 court. In making said assessments the tax assessor heard no evidence and examined no lands to ascertain whether the in fact contained minerals or not, but merely examined the deed records of the county, and made therefrom a list of all lands in the county in which the owners had executed and recorded instruments purporting to grant to others mineral rights or the right to search for minerals in their lands. The list so made contained no mention of any tracts of land in which the entire fee simple titles were held by the same person or persons or in which mineral rights had not been conveyed by the owners of the fee to third persons. At the head of the list so made the tax assessor wrote the words "mineral rights only." Opposite each tract of land shown on the list he wrote the assessed value of fifty cents per acre, the name of the owner of the mineral rights and the description of the land by abstract number, survey number, original grantee, and so on, as shown by the statement of facts. The list so made was submitted to the board of equalization as a roll of unrendered property, was by the board approved as made, without any evidence having been heard, and now forms the basis of the claim against the defendant for taxes. Said list was approved by the Board contemporaneously with its approval of the rolls showing the assessment made against the grantors of defendant, as hereinbefore specified. In assessing the lands mentioned in plaintiff's petition for taxation against the grantors hereinabove mentioned for the year 1907, and in assessing for taxation against the owners of the fee simple titles the other lands in the county in which mineral rights had been conveyed to third persons, neither the tax assessor nor the board of equalization made any reduction in the valuation of same on account of the fact that mineral rights therein had been conveyed to third persons; but said lands were, in assessing the taxes of the owners of the fee simple titles, valued exactly as other lands in the county of similar quality were valued in assessing taxes against those land owners who had not conveyed to third persons any mineral or other rights in their lands.

In other words, all lands in the county in which the ownership
123 of the entire fee simple title had not been divided by conveyance of mineral rights to third persons were assessed for

taxation at values corresponding exactly to the value placed on the lands mentioned in plaintiff's petition in assessing same for taxation against the grantors of defendant. No developed mines exist or existed on January 1st, 1907 on any of the lands mentioned in plaintiff's petition, and no minerals of any character capable of being worked for profit or having a value, are shown to have ever existed on any of said lands. Said lands do not differ, so far as mineral indications are concerned, from the lands of the county in general in which mineral rights have been conveyed to third persons by the owners of the fee simple title. Defendant is and was on January 1st, 1907, a resident and citizen of the Parish of Orleans, State of Louisiana.

The commissioners' court of Llano County at its regular term in February, 1907, by an order of said court made and entered in the minutes of said court, levied a county general and special tax on all property in the county subject to taxation for said year, and said order was made and entered in the manner and form prescribed by statute. The rates of taxation so levied, and the various purposes for which they were levied will be found in the statement of facts, and as there contained are hereby made a part of these findings. The taxes here sued for were assessed in the manner shown by the inventory assessment sheet or list which is copied in the statement of facts, were thereafter carried to and placed upon the tax rolls for the year 1907 of said county, and said tax rolls for said year were made up and certified to by the proper officer. All of said proceedings having been done in the form and manner prescribed by statute. The delinquent list for said county for taxes unpaid and delinquent on March 31st 1908 for the year 1907, in which appear the taxes sued for herein, were prepared in triplicate, showing the penalties assessed against same, including penalties sued for herein, by the tax collector of Llano County, and presented by him to the commissioners' court of said county for examination and correction of errors that may appear therein; said delinquent tax list showing the taxes and penalties sued for herein, was thereafter examined and approved by the aforesaid commissioners' court and the three copies thereof disposed of as the law directs, and said delinquent tax list was thereafter duly published for the time required by law in the Llano News, a newspaper published in Llano County, Texas, all of said proceedings having been done and performed in the manner and form prescribed by statute.

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*Conclusions of Law.*

1. The written instruments of the stereotyped form above mentioned conveyed to the defendant only such of the minerals and mineral substances located on the lands mentioned in plaintiff's petition as might be ascertained to exist and to be capable of being worked for profit by underground excavations or open workings, or both. There is no evidence that there exists on the lands any physical property to which title has vested in defendant by virtue of the grant contained in the instrument, and as it is agreed that the

defendant has no interest in the lands, except such interest (if any) as vested in him by virtue of said instruments, I conclude that he did not own on January 1, 1907 any interest in said lands, except the incorporeal license or privilege to prospect and develop said lands, and to thereby acquire title to such (if any) of the minerals or mineral substances as might be discovered thereon or therein of the character, quality and quantity specified in the instruments. I further conclude that the tax assessments on which the suit is predicated do not purport to assess for taxation the incorporal licenses or privileges above mentioned, and that same could not lawfully be assessed against him in Llano County.

2. As an additional reason why the plaintiff should not recover the taxes claimed under said stereotyped conveyances I conclude that under the Constitution and laws of this State, before defendant could be compelled to pay taxes in Llano County on account of any
125 interest, right or privilege vested in him by the terms of these deeds, it would devolve upon the plaintiff to establish by evidence that there was mineral or mineral substances on the lands embraced in these deeds that could be worked at a profit by underground excavations or open workings or both, and that said facts are not established by the evidence.

3. I conclude that the burden of proof was upon the plaintiff to show by a preponderance of the evidence that there existed on January 1st, 1907, some mineral or mineral substances upon those lands mentioned in the plaintiff's petition in which the defendant owns unqualified mineral rights by virtue of the six non-stereotyped instruments above mentioned, and that plaintiff is not entitled to recover of defendant the taxes claimed against those lands, because the preponderance of the evidence does not show that any minerals or mineral substances were located on or contained in said lands, or that said instruments vested in defendant the title to any physical property.

4. I conclude that the tax renditions for 1907 made by the grantors of the defendant, as above stated, and the tax assessments predicated thereon, embraced all interest in the lands mentioned in plaintiff's petition, including "all mines, minerals, quarries and fossils in and under same"; and that all taxes due the state and county on said lands for the year 1907 have been paid, including all taxes due on the minerals in or on said lands. I further conclude that when the State and County once assesses the entire interest in property for a given year and collects the taxes thereon, they cannot thereafter assess the same property or re-assess any interest therein for the same year, in the name of another, and cannot collect taxes thereon for said year, even though the second assessment be against the real owner of the interest assessed.

The above conclusions make it necessary to render a judgment for the defendant, and I therefore find it unnecessary to reach any conclusion on the question of whether or not the facts disclosed by the record and above stated in my findings of fact, render the tax assessments against the defendant void because of inequality and systematic discrimination in the plan by which they

were made. To which conclusions of fact and law as announced by the court in rendering the judgment in this cause, the plaintiff then and there in open court excepted, and now assigns error as set forth by the first and second assignments.

By the first assignment it is urged that the court erred in its first conclusion of law in holding that the stereotyped deeds introduced in evidence by the plaintiff did not convey to the defendant R. H. Downman any interest or right in land taxable under the Constitution and laws of the State of Texas; and by its second it is urged that the court erred in its second conclusion of law, in holding that said stereotyped deeds did not convey any interest to said R. H. Downman taxable under the constitution and laws of the state of Texas until the plaintiff had established by evidence that there were minerals or mineral substances on the lands embraced in said deeds that could be worked at a profit by underground excavations or open workings, or both, in that the grantors of said defendant Downman had, for a valuable consideration, to-wit $2 per acre, conveyed to said Downman by said instruments certain rights, titles and interest in said lands, and whether it was of much or of little value, it did not place the burden upon the state to develop and establish the value of the rights conveyed to said Downman in order to make the same taxable. And by its proposition thereunder the state asserts that the instruments in stereotyped form conveyed an interest in the lands described in said instruments, taxable under the laws of the State of Texas, whether or not it was known that minerals capable of being worked or mined at a profit existed on said lands at the time of their execution.

As there is no conflict in the evidence, we deem it not improper to supplement the findings of fact as made by the court with certain other matters appearing in the evidence; and will add that
127 there are no facts in the record showing that minerals did or did not exist on the lands mentioned in plaintiff's petition. The evidence in this respect is that no mines exist on the lands, and that it is unknown whether minerals, capable of being worked at a profit, existed on said lands. It appears, however, from the statement of facts, that the defendant paid for the rights he acquired from $1.50 to $2 per acre. And it further appears that there are showings of mineralization, floats and iron stains on said lands, and that the defendant was induced to purchase the same by reason of this fact, as well as the generally reputed fact that rich mineral ores exist on the lands in said section.

It will therefore be seen that the questions for our determination, as involved in these assignments are, first, whether or not the court was correct in its conclusion, in holding that said deeds to Downman did not convey to defendant any interest or right in the land subject to be taxed under the Constitution and laws of this State, but only a license or right to prospect for minerals therein, which franchise or right is not taxable in this state; and, second, if such deeds did convey an interest in land taxable under the laws of this State, then whether or not the burden was upon the plaintiff to show that such mineral substances as named in said conveyances capable of

being worked for a profit existed upon said lands before the same became subject to taxation.

We think it is clear under the authorities that ores and minerals contained in land are property, and that the same, by proper conveyance, can be severed from the land by the owner thereof, and when so severed, the same become the subject of taxation, separate and apart from the land itself. One party may own the surface estate and another the minerals or mineral rights in said land; and when so owned separately, each are subject to be taxed for their respective properties in the land. Of course, until so severed, it is a part of the land, and is subject to taxation as such in the hands of the owner. It is said in White on Mines and Mining Remedies, pages 541, 545, sec. 410, that "The duty of paying taxes being primarily
128 upon the owner of the land, so long as the ownership of the ore is the same as that of the surface, the surface owner should pay taxes on the ore in place as a part and parcel of his land; but when there is a severance of the titles, and the ownership of the ore passes to other than the surface owner, he should bear the burden of his own property, the same as the surface owner should; and the surface and the mineral in place should be accordingly assessed to the respective owners."

Our own Constitution, Art. 14, Sec. 7, provides that the State of Texas releases to the owner or owners of the soil all mines or mineral that may be on the same, subject to taxation as other property. Art. 8, sec. 1 of the Constitution declares that all property in this state, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which may be ascertained as provided by law, etc. Section 11 of said Article provides that all such property shall be assessed for taxation and the taxes paid in the county where situated. Section 15, provides that the annual assessment made upon landed property shall be a special lien thereon, and all property, both real and personal, belonging to any delinquent tax payer, shall be liable to seizure and sale for the payment of all taxes and penalties due by such delinquent.

Art. 5061, Sayles Rev. Stat. provides that real property for the purposes of taxation shall be construed to include land itself, whether laid out in town lots or otherwise; and all the buildings, structures and improvements of whatsoever kind thereon and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same.

Now did the deeds in evidence convey to Downman an interest in land? If so, such interest was taxable under the laws of this State in the county where the lands were situated. It seems to us that the conclusion is irresistible that they did, and that no mere privi-
129 lege or incorporeal right was conveyed thereby, notwithstanding the restrictions mentioned in the stereotyped conveyances first above referred to. It seems the parties themselves evidently considered the mineral rights so conveyed as real estate, since the instruments are in form similar to ordinary conveyances of real estate, containing all the requisites of deeds of conveyance. They were acknowledged as required for such conveyances and recorded in the deed

records of the county where such mineral rights were located. The grantee considered the interest so conveyed valuable, paying therefor a consideration of from $1.50 to $2 per acre, as recited in the deeds, which is supported by the testimony.

In discussing the case of In Re Major, 134 Ill. 19, whether or not mineral interest in land which had been reserved from the conveyance of said land to other parties was subject to taxation against the grantor, who had reserved such interest, the court in its opinion said: "It is, however, said that the question is not as to the right to assess and tax coal in land which is reserved and held separate from the fee of the surface, but the question is as to the existence of the coal assessed, and it is urged that there is no coal mine open or in operation upon said land, and no evidence that coal exists thereunder, and therefore the assessor was not authorized to make the assessment. It is alleged in the petition and is otherwise manifest that whatever there was of coals or minerals underlying said land was reserved and continued to be the property of appellant, with the right to mine the same. If it was property, it was the duty of the assessor to return an assessment thereof. If valued too high, another mode is pointed out for redress, to which appellant might have resorted. The ownership of the coal was severed from the ownership of the soil, and the fee of the coal was property and as such was liable for its just portion of taxation."

In discussing the taxability of mineral rights, the court in Schull et. al. vs. the People, 61 N. E. 1122, said: "The estate in minerals is denominated a 'mining right' in sections 6 and 7 of said
130 chapter of the statute entitled 'mines' before referred to, and if the estate has been created by the reservation in a deed conveying the land to another, of the right to retain and take the mineral, it would not inappropriately be called a 'mining right reservation.' If the interest of the objectors was not that of a mining right, but a mere easement, it was in their power to prove such to be the state of the case, and the burden rested upon them to do so."

In the case of Consolidated Coal Co. of St. Louis, vs. Baker, 136 Ill. 545, certain tracts of land had been assessed for taxes against certain owners thereof. The tax assessor had also returned an assessment for coal under the same lands against the Consolidated Coal Co. The Coal Company objected to the assessment against it on the ground, first: The coal was not assessable separately from the land in which it lies; and, second, the taxes have been paid on the land in which the coal lies, and that land was assessed without excepting the coal. The opinion says: "It is insisted first, that the burthen was upon the collector to show that the owners of the land had in some way sold and conveyed the coal underlying their lands respectively; and having failed to do so, the objectors should have been sustained. We are unable to concur in this view. The assessment was introduced in evidence and the assessor called as a witness, who testified that in making the assessment he decreased the value placed upon the land by the amount he placed upon the coal, and that 'the superintendent of objector's mines where the coal is situated, told me the number of acres in each tract yet unmined, and I followed his state-

ment' in making the assessment. The collector's return of the delinquent list, with statutory notice and proof of publication, prima facie entitles the collector to judgment for the tax returned as delinquent. The presumption is that the assessor and other officers charged with the levy and collection of taxes, have done their duty, and have not made an illegal assessment or returned an illegal tax delinquent. We have repeatedly held that the burthen of
131 showing such matters as would avoid the tax or establish its illegality is upon the person objecting thereto. (Citing authorities.) Where the return of the collector is in conformity with the statute, the presumption of the regularity of the assessment and validity of the tax is indulged until facts are shown that impeach their legality. Here the tax was returned delinquent against the coal and underlying the several tracts named, and the presumption must obtain that it was property so assessed and returned, until the contrary is made to appear. It is insisted, however, that under the revenue laws of this state coal and other substances which in their natural state and situs are part of the realty, cannot be so severed from the ownership of the land or the land itself, as to become separately taxable, and that therefore the assessment made upon upon the coal underlying these lands is void,—that the land having been assessed to the several owners thereof, and the taxes thereon duly paid, there was no further liability because of any substance upon or forming part of the land. The fourth section of the Revenue Act (Rev. Stats. Chap. 120) provides: 'Real property shall be valued as follows: first, each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale; second, taxable leasehold estates shall be valued at such price as they would bring at fair voluntary sale for cash * * * 4th. In valuing any real property, on which there is coal or other mine or stone or other quarry the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash. And it is insisted, therefore, for the purposes of taxation that there can be no severance of the mine from the land, but, as before said, the value of the mine must be included in the valuation of the land, however separated by contract or severally held and owned. Sec. 1 of Art. 9 of the Constitution of this state provides that 'the General Assembly shall provide such revenue as may be needed by levying a tax by valuation, so that
132 every person and corporation shall pay a tax in proportion to the value of his or its property.' Construing the provisions of the revenue law quoted in the light of the provision of the Constitution, it would seem that the question was whether appellant had or could have held, by deed of conveyance or lease, such an interest in the coal underlying these lands as would be property and assessable as land. By the statute of New York, the term 'land,' as used in the law relating to property liable to taxation, etc., is by statute to be construed 'to include the land itself, including land and water, all buildings and other articles erected upon or affixed to the soil, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils in and under the same.' In Smith vs. Mayor of New York, 68 N. Y. 552, it was held that under the defi-

nition of 'land' thus given, 'one may be taxed as owner of the fee of the land, and another for the trees, buildings and other structures thereon, and the minerals and quarries therein;' and it was there held that a pier built upon the land of the city by the appellant Smith was real estate, within the meaning of the statute and taxable as such, although built upon the land of another. In People vs. Cassidy, 46 N. Y. 46, the question was as to the right to tax the track of a street railway placed in the streets of a city as land, and it was held to be land within the statute. The position was there taken that it was not real estate, but the court said: 'The statute means, for its purpose, to make two general divisions of property; one all lands, another all personal property, and then to be more definite, it declares that by land is meant the earth itself, and also all buildings and other articles erected upon or affixed to the same. We do not think that when buildings or other articles are erected upon or affixed to the earth, they are not, in view of the statute, land, unless held and owned in connection with the ownership of the fee in the soil. We are of the opinion that the statute means that such an interest in real estate as will protect the erection or affixing thereon and the possession of the fixtures, will bring such building
133 and fixtures within the term "lands," and hold them to assessment as the land of whomsoever has the interest in the real estate and owns and posesses the buildings and fixtures.' See People Ex. rel. vs. Commissioners of Taxes, 10 Hun., 207; and the People ex. rel. vs. Board of Assessors, 93 N. Y. 308. Wherein it was held in the last case that the parties might regulate their several interests in real estate by contract, so that one might own the buildings and another the fee, holding that the buildings in such case were properly assessed as land." The court further adds:

"We do not deem it necessary to extend this opinion by citation from other courts. Our statute provides that in valuing lands on which there is coal or other mine, or stone or other quarry, the price or value of such mine or quarry shall be included. This necessarily requires a valuation of the mine or quarry, and if there is no division of ownership, it will all properly be assessed with the fee. It is, however, a matter of common knowledge that the coal underlying lands is conveyed by deed or other instrument, so as to vest the coal, with right of mining the same, in another than the owner of the fee. Ordinarily perhaps, there is an absolute conveyance of the coal or other mineral, with a lease of sufficient of the surface for shafts, etc., at which to deliver the coal from the mine, or it may be mined by entries from other adjacent lands, without entering upon the surface of the particular tract of land upon which the coal is situated. The grant is more than a mere license to enter and mine the coal,—it is a conveyance of the coal itself, as it lies imbedded between the stratas of stone, slate or clay in the state of nature. The title passes to it as property. It is true its value must be added to the valuation of the land, but it by no means follows that it must be assessed with it. The parties have created two distinct properties in the same land,—one holding one property right in the land, and the other a distinctly separate property interest therein. The statute, as before said, when read in view of the constitutional provision quoted, would

require the assessment to be made in the names of the per-
134 sons or corporations holding such property interest in the land. True, the total assessment must equal the value of the land augmented by the value of the coal or mine, but the assessment of each should be made separately according to the several holdings to the end that each 'shall pay a tax in proportion to the value of his, her or its property.' The coal thus reserved by the grantor of the land is not personal property, and cannot be until it is severed. By the conveyance of it, an interest in the land itself passes to the grantee,—the ownership of portions of the constituents of the land,—and falls within the designation of real estate."

In Benavides vs. Hunt, 79 Tex. 389, it was held that the contract granting to the lessee the right to mine coal or other minerals on land for a term of years, conveys to him an interest in the land described, and that therefore, the four years statute of limitation, which was pleaded, did not apply. See also Stewart vs. Commonwealth, 23 S. W. 367; Sanderson vs. Scranton, 105 Pa. St. 459, Kinciad vs. McGowan, 4 S. W. 802; Wolfe County vs. Bate, 105 S. W. 447.

From the foregoing authorities we hold that the deeds to Downman conveyed to him an interest in lands, such as is taxable under the laws of this State. We further believe, and therefore hold, that it was unnecessary on the part of the State, as claimed by appellee, to show that the lands described in the deeds of conveyance to Downman contained any mineral ores or other valuable substances, because we think the burthen was on the appellee to show that they did not contain such minerals. The State by the introduction of the tax rolls in evidence made a prima facie case, the onus of rebutting which was upon the appellee. We therefore sustain both of said assignments and hold that the court erred in the conclusions of law therein complained of.

What we have said under the previous assignments we think disposes of the question raised by the third assignment, for which reason it will be unnecessary to discuss same.

By its fourth assignment appellant insists that the court erred in its fourth, conclusion of law in holding that the tax rendi-
135 tion for 1907 made by the grantors of appellee Downman embraced all interests in the land mentioned in plaintiff's petition, when in truth and in fact said renditions at the time made, while not in the manner and form as made, expressly excluding from said rendition the idea that all interests were rendered were never approved by the commissioners' court as a full rendition of all interest in the lands, but on the contrary, said commissioners' court ordered and directed the tax assessor of Llano County to render and assess separate and apart for taxes the said estate and rights that had been by said grantors conveyed to defendant Downman, and said renditions as made by said grantors were not approved until the said assessments had been made by the assessor against said Downman, at which time the said commissioners' court of Llano County approved the renditions as made by the assessor of Llano County of the estate and rights of R. H. Downman as con-

veyed to him by the stereotyped and six other deeds introduced in evidence, and because it held that, in as much as the grantors of R. H. Downman had rendered the land as above specified, that the commissioners' court had no authority before the date of approving the said renditions of said grantors to instruct the tax assessor to assess separately the estate and rights in the lands conveyed by said grantors to R. H. Downman and thereafter to approve both assessments and require the payment of taxes by the grantors of R. H. Downman of the estate they owned in said land and also the payment by R. H. Downman of the taxes assessed against him for the estate and rights he owned in the lands." And by its proposition thereunder, appellant urges that the fact that each of the grantors of the interests conveyed to appellee in the tracts of land mentioned in plaintiff's petition rendered said lands for taxation, listing same as real estate and did not employ any language indicating an intention to exclude or except from their valuation as made any mineral rights or other interest whatever in said lands, but said renditions were made as of the whole interests in said lands in the manner and form prescribed by statute for the ren-
135 dition of real estate, and were accepted by the tax assessor and approved by the board of equalization, and the tax rolls made up therefrom and predicated on said renditions and assessments in the form prescribed by statute for making up rolls showing taxes due on real estate, where the same has been rendered for taxation by the owners, did not render invalid the subsequent assessment of the mineral rights owned by appellee in said tracts of land.

It will be recalled that the fourth conclusion of law held that the tax rendition for 1907 made by the grantors of Downman and the tax assessments predicated thereon embraced all interest in the lands mentioned in plaintiff's petition, inclusive of the mines, mineral, quarries and fossils in or under the same, and that since all taxes due the State and County on said lands for 1907 had been paid, therefore, the state was precluded from reassessing the same property or any interest therein for the same year in the name of another, and again collecting taxes for said year, notwithstanding the second assessment might be against the real owner of the interest assessed. This conclusion was based upon the fourth finding of fact above set out. Appellee by his first counter proposition contends that as the undisputed evidence in the case sustains the finding of the trial court that all taxes due for the year 1907 on each of the tracts of land mentioned in plaintiff's petition had been paid in full prior to the trial of this case, that the trial court, for this reason, properly rendered judgment for appellee, regardless of any other defense presented, citing in support of his contention Arts. 6052 and 5076 R. S.; also State vs. A. & N. W. R. R. Co. 94 Tex. 530; Commonwealth vs. Chicago R. R. Co. 105 S. W. 127; Commonwealth vs. Ingalls, 89 S. W. 157; Spaulding vs. O'Callaghan, 76 S. W. 180; Commonwealth vs. Gaines & Co. 80 Ky. 489; Commonwealth vs. Ches. & Ohio R. R., 91 S. W. 672.

The authorities cited by appellee sustain abstractly the contention as made by him, and if his premise is correct, then there can be

no question that the court was correct in the conclusions
137 reached; because if, in fact, the grantors of Downman had by their voluntary assessment, which had been accepted and acted upon by the authorities, rendered for taxation not only their interest in the real estate mentioned in said conveyances, but that the same embraced the mineral rights of Downman as well, and the State had collected from said grantors the whole amount of taxes so due, then and in that event the State, through its officers could not re-assess and collect an additional tax from Downman. But was this done? Appellee contends that it was, by reason of the fact that in the renditions of said real estate as given in by the grantors of Downman and accepted by the assessor, no mention was made in said assessments of the fact that they had previously conveyed their interest in the mineral rights underlying said lands, and there was nothing to indicate any such fact in any of said assessments. While this is true, and it would have been better for said grantors to have mentioned in said assessments that they only rendered the surface estate in said lands, yet we find that when the commissioners' court met as a board of equalization, and these assessments of Downman's grantors were presented for their consideration, they, with knowledge of the fact that the mineral rights had been conveyed by said grantors, deferred action thereon, and directed the assessor, by an order spread upon their minutes, as hereinbefore set out, to assess for taxation all mineral rights in lands in said county where it appeared that the owners of the surface estate had conveyed the mineral rights therein. The record shows that the assessor literally followed the direction of the commissioners' court in this respect, and assessed as against Downman the mineral rights so conveyed to him by each of said grantors, which assessments were at the same time together with the assessments of the lands rendered by said grantors, submitted to said court for their consideration, and at the same time said court approved the assessments of said grantors as well as the assessments against Downman for his mineral rights
in the tracts so conveyed to him by said grantors. This
138 being true, it clearly appears that the commissioners' court did not consider the rendition of Downman's grantors as embracing the mineral rights in said lands; but, on the contrary, specially directed that the same should be assessed separate and apart from the interest of the grantors therein, and the same was so assessed, and the assessments so separately made were approved by them. For which reason, it seems to us that the rule contended for by appellee does not apply but, on the contrary the contention of appellant is correct and should be sustained.

There was no finding in its conclusions of law by the trial court relative to whether or not the tax assessments against the defendant were void on the ground of inequality and systematic discrimination, the court holding that since it made a general finding in favor of the defendant it was unnecessary to pass upon this question; and while appellant has presented no assignment discussing this question, yet since the judgment of the court, if correct, could be sustained upon the theory if warranted by the facts, which is not ad-

mitted, that said tax was not uniform and equal but systematically discriminatory against the appellee, notwithstanding the fact that the court did not base its judgment upon this feature of the case; and especially in view of the fact that appellee in his brief presents this phase of the case and urges that the judgment of the court is correct, since its findings of fact show, as he contends, that the assessments in question were void because it appeared from said finding that appellee's mineral rights were assessed for taxes, whereas the mineral rights belonging to other persons in said county, who owned both the surface estate and the mineral rights were not so assessed for taxes, we therefore think it appropriate to present our views upon this question. Appellee cites the following authorities in support of his contention: Sec. 1, art. 8 Texas Const.; Sec. 1, 14th Amend. Const. U. S.; Lively vs. M. K. & T. Ry. Co. 102 Tex. 558; M. K. & T. Ry. Co. vs. Shannon et al. 100 Tex. 396; Cummings vs. Mer-
139 chants etc. Bank, 101 U. S. 153, Raymond vs. Chicago U. T. Co., 207 U. S. 20; Taylor vs. L. & N. Ry. Co., 88 Fed. Rep. 850; Bank vs. Hines, 3 Ohio St. 15; Ex parte Ft. Smith etc. Bridge Co. 36 S. W. 1050; Chicago N. & Q. Ry. Co. vs. Board etc. 39 Pac. Rep. 1039; Andrews vs. King Co. 22 Am. St. 136.

The order of the Commissioners' court above recited, under which the assessments against appellee were made, as well as the facts in evidence, we think, fail to sustain appellee's contention in this respect. It is true that the tax assessor thereunder was directed to assess for taxes all mineral rights in said county by whomsoever held, where it appeared that the same had been severed by conveyance from the surface estate; still, this is not equivalent to a direction to the assessor to disregard in his assessment those holding lands in which mineral rights existed, but had not been severed by conveyance to others. And it would seem to us that before the contention made by appellee could be upheld that it ought to be made to appear that the tax assessor of Llano County and the tax authorities thereof had declined to assess for taxes those owning such mineral lands. Nor do we think this is made manifest by a failure on the part of said assessor to reduce the value of the assessment against the lands of Downman's grantors. The other lands in said county were assessed for taxes against the owners as lands are usually assessed. Such an assessment unquestionably embraced the mineral rights in said lands, because the same were unqualified and included an assessment against the minerals, if any there be thereon, as well as against the surface estate. The order of the commissioners' court was not a direction to assess alone the mineral rights held by Downman, but it was general and embraced within it all persons holding and owning mineral rights where the same had been severed by the owner from the surface estate. We think this is an entirely different question from that determined in the case of Lively vs. the M. K. & T. Ry. Co., supra. In that case it was shown that the assessment of the intangible assets of the
140 railway company was fixed at their full market value, while the value of all other property in the county was assessed at two-thirds of its actual value. Therefore, such corporation was

denied the right of equal and uniform taxation secured to it by section 1, article 8 of the State Constitution, as well as the right to equal protection of the laws, as guaranteed by section 1 of the 14th amendment of the Constitution of the United States, to our minds an entirely dissimilar proposition to the one here presented. Besides this, we are inclined to think that the evidence fails to show any such lack of uniformity and inequality or systematic descrimination as complained of by appellee. It does not appear from the evidence that the taxes assessed against the defendant were greater than those assessed against any other owner of mineral rights in Llano County. But the argument made, based on the facts, is that the owners of the surface estate, to-wit: Downman's grantors, were required to pay and did pay, the same amount of taxes upon their lands as other owners, who had no- conveyed the mineral rights in their respective tracts. This latter feature, however, does not make the assessment in our judgment, contravene either the letter or the spirit of the constitutional provisions above quoted.

Before closing this opinion the writer desires to express his appreciation of and acknowledgment for the great aid afforded him in the investigation of the questions here discussed by the able and elaborate briefs of the distinguished counsel representing the respective parties hereto.

Believing that the court erred, for the reasons hereinabove pointed out, it becomes our duty to reverse the case and to render such judgment as the court below should have rendered. We therefore direct that the judgment of the court below be and the same is hereby reversed and rendered in behalf of appellant.

B. H. RICE,
*Associate Justice.*

Reversed and Rendered.

Filed Jan. 18, 1911.

141 Endorsed: No. 4613. The State of Texas, Appellant vs. R. H. Downman, Appellee. Appeal from Llano County. Opinion Reversed and Rendered, B. H. Rice, Associate Justice. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Jan. 18, 1911. R. H. Connerly, Clerk. Filed in Supreme Court, Mar. 4, 1911. F. T. Connerly, Clerk.

*Judgment of the Court of Civil Appeals.*

Rendered January 18, 1911.

No. 4613.

STATE OF TEXAS
vs.
R. H. DOWNMAN.

Appeal from the District Court of Llano County.

*Opinion by Associate Justice Rice.*

This cause came on to be heard on the Llano County record and the same being inspected because it is the opinion of the court that there was error in the judgment, it is therefore, considered, adjudged and ordered that the judgment of the court below be reversed and here rendered, so that the appellant, the State of Texas, for itself and for the use of Llano County, do have and recover of and from the appellee R. H. Downman, the sum of Three Hundred and One and 19-100 Dollars ($301.19), the same being the amount of taxes, interest, penalties and costs due upon the minerals
112 and mineral rights owned by said appellee for the year 1907, in the lands lying and being in Llano County, Texas, as described in the plaintiff's petition in this case, in Exhibit "A" to said petition, the same being in the delinquent tax list of Llano County, as returned and reported by W. C. Wallace, Tax Collector, for the year 1907, saving and excepting therefrom the lands mentioned and contained in the agreement incorporated in the transcript on file in this cause in this court, and including such portions of said land included in said agreement as are therein specified as the property of said appellee, and excluding therefrom Survey Abstract No. 875, Survey No. 17, Original Grantee, Thomas Williams, of 160 acres, conceded in the Statement of Facts as not to be included in the lands in which said appellee owns and has minerals and mineral rights; that the lien of the appellant for itself and for the use of Llano County, as the same existed on the 31st day of March, 1908, upon the minerals and mineral rights of said appellee R. H. Downman in to and upon the lands above mentioned and described, except as above excepted, in the sum of Three Hundred One and 19-100 Dollars ($301.19) be foreclosed, and that due process issue out of the District Court of Llano County, Texas, directed to the Sheriff or any Constable of said County, commanding him to sell said interest of said Downman in said lands as under execution, and of the proceeds of said sale to pay said judgment, interest, penalties and costs, including interest thereon from said 31st day of March, 1908, at six per cent per annum, and that the appellee, R. H. Downman be paid the surplus thereof, if any; that he pay all costs in this behalf expended, both in this court and the court below, and that this decision be certified below for observance.

143 In the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

No. 4613.

THE STATE OF TEXAS, Appellant,
vs.
R. H. DOWNMAN, Appellee.

*Motion for Rehearing.*

To the Honorables the Judges of said Court:

Comes now R. H. Downman, appellee in the above styled and numbered cause, and moves the court to grant him a rehearing in said cause and to set aside its judgment rendered herein on January 18, 1911, reversing the judgment of the trial court in favor of appellee and rendering judgment in favor of appellant, on each of the following grounds, to-wit:

1. The Court of Civil Appeals erred in reversing the judgment rendered herein by the trial court in favor of appellee and in rendering judgment herein in favor of appellant, because the undisputed evidence in the case and the findings of fact predicated thereon by the trial court, show that the tax assessments of Llano County for the year 1907 against appellee on which the claims in suit of appellant are predicated are prejudicial to appellee and void on account of systematic inequality and lack of uniformity in the plan adopted by the taxing officers of Llano County for valuing for purposes of taxation mineral rights owned in said county by persons who did not in said year also own the surface estates in the lands to which their mineral rights appertained.

2. The Court of Civil Appeals erred in rendering judgment in this cause for appellant instead of remanding said cause for a new trial, because it affirmatively appears from the record that the appellee pleaded facts on the former trial and introduced
144 evidence tending to show that the tax assessments of Llano County for the year 1907 on which the claim in suit of appellant is predicated are prejudicial to appellee and void for systematic inequality and lack of uniformity in the plan adopted by the taxing officers of Llano County for valuing the mineral rights of said county for purposes of taxation; and it also affirmatively appears from the record that the issue so tendered was never decided by the trial court—said court having determined that it was unnecessary to determine said issue because, in its opinion, the appellee was entitled to judgment regardless of how said issue might be determined.

3. The Court of Civil Appeals erred in reversing the judgment of the trial court in favor of appellee and in rendering judgment in favor of appellant because it appears from the evidence in the case and the uncontested findings of fact of the trial judge based thereon that the tax assessments of 1907 on which the taxes sued

for by appellant are predicated were prejudicial to the rights of the appellee under the Constitution of the State of Texas and under the Constitution of the United States of America and void in this, to-wit: That no mineral rights in said county which were subject to taxation for said year were in fact valued for purposes of taxation except such mineral rights as were owned by persons who did not also own the surface estates in the lands to which such mineral rights appertained, and that the valuations of mineral rights for taxation for said year in said county were for said reason systematically unequal, ununiform, prejudicial and discriminatory against all property owners in said county who, like appellee, owned mineral rights in the county in lands the surface estates in which were owned by other persons, and that if said assessments be enforced they will result in imposing upon the latter class of property owners an unlawful burden of taxation and in taking and confiscation of their properties without due process of law.

4. The Court of Civil Appeals erred in reversing the judg-
145 ment of the trial court in favor of the appellee and in rendering judgment in favor of appellant on the tax claims in suit, because the undisputed evidence in the record and the uncontested findings of the trial court show that the taxing officers of Llano County, in making tax assessments for the year 1907, adopted a system of valuation for purposes of taxation which necessarily operated unequally and prejudicially against all owners of mineral rights in the lands of others in violation of the rights of such property owners as guaranteed by the Constitution of Texas and of the United States.

5. The Court of Civil Appeals erred in reversing the judgment of the trial court in favor of appellee and in rendering judgment in favor of appellant on the tax claims in suit, because the trial court found as a fact on competent evidence, that all taxes due for the year 1907, on each of the tracts of land mentioned in plaintiff's petition, had been paid in full prior to the trial of this cause, and because no error was assigned or complaint made by appellant on this appeal that the evidence did not warrant the finding of facts by the trial court.

6. The Court of Civil Appeals erred in reversing the judgment of the trial court in favor of appellee and in rendering judgment in favor of appellant on the tax claims in suit, because the undisputed evidence in the case sustains the finding of the trial court, that all taxes due for the year 1907 on each of the tracts of land mentioned in plaintiff's petition had been paid in full prior to the trial of this cause, and the trial court for this reason properly rendered judgment for appellee regardless of any other defense presented.

7. The Court of Civil Appeals erred in reversing the judgment of the trial court in favor of appellee and in rendering judgment in favor of appellant on such of the tax claims in suit as were predicated upon those alleged mineral rights of appellee which vested in him by virtue of the instruments in stereotyped form described in the findings of the trial court, because said instruments in
146 stereotyped form merely operated to vest in appellee the right to go upon the lands of the grantors and prospect for minerals

and to own, mine and take away such minerals as the appellee might find in said lands as the result of prospecting, and because the undisputed evidence in the case showed that the appellee had not at the time of the trial gone on said lands, prospected same, or discovered thereon any minerals whatsoever, and therefore that no mineral rights in said lands had vested in appellee.

8. The Court of Civil Appeals erred in reversing the judgment of the trial court and in rendering judgment for appellant on such of the tax claims in suit as represented taxes on mineral rights assessed against the appellee and against mineral rights alleged to be owned by appellee by virtue of the stereotyped instruments described in the findings of the trial court, because the proper construction and legal effect of said stereotyped instruments was not to vest in appellee any taxable interest in real estate in Llano County taxable as mineral rights until minerals capable of being developed and mined at a profit were ascertained to exist on said lands, and because the undisputed evidence showed that no such minerals had been discovered at the time of the trial.

9. The Court of Civil Appeals erred in reversing the judgment of the trial court and in rendering judgment for appellant on those tax claims in suit which are predicated upon the alleged ownership by appellee of alleged mineral rights conveyed by virtue of instruments in stereotyped form described in the findings of the trial court because the instruments in stereotyped form did not convey to appellee any such interest in lands as is taxable under the laws of Texas in the absence of proof that minerals capable of being worked or mined at a profit existed on said land.

10. The Court of Civil Appeals erred in reversing the judgment of the trial court and in rendering judgment in favor of
147 appellant on the tax claims in suit, because the appellant was not entitled to recover any of the taxes for which a suit, the preponderance of the evidence showing that no mineral rights or mineral substances were located on or contained in any of the lands mentioned in plaintiff's petition, and that the alleged conveyances by virtue of which appellant claimed that appellee owned interest in said lands vested in appellee no title to any physical property whatever, and because the findings of fact by the trial court based on said evidence were in no manner attacked or complained of by appellant on this appeal.

11. The Court of Civil Appeals erred in reversing the judgment of the trial court in favor of appellee, and in rendering judgment in favor of appellant on the tax claims in suit, because the findings of fact by the trial court are insufficient as a matter of law to warrant said judgment in favor of appellant, and the Court of Civil Appeals has no jurisdiction on this appeal to reverse or revise said findings of fact because same are not questioned, contested or complained of by appellant under any of its assignments of error.

*Argument.*

It is very clear to us that the court has very thoroughly haustively considered this case, and we have no desire to upon its patience or forbearance. We will, therefore, very outline for the court our views on the issues presented. I this we will for the sake of convenience and brevity style th of appellee in the lands mentioned in plaintiff's petition as "rights" and the rights of appellee's grantors in the same "surface estates."

We freely concede that it is perfectly competent under t of Texas to sever the surface estate from the mineral right i and that when said estates are so severed, the owner of each is obligated to pay taxes thereon.

When the grantors of Downman rendered their lands for t they did so by written instruments which had the leg
148 under the statute of rendering therein for taxation th eral rights as well as the surface estates. If the taxing in accepting said renditions did so with the mental reservati they would also assess against Downman the taxes due on the rights on said lands for the same year, said mental reservat not in the slightest degree change or affect the legal effect renditions of Downman's grantors. The renditions stood ex his grantors had made them. They included every interest lands. The lands were assessed against Downman's grantors full value of their surface estates and of their mineral estates taxes so assessed have been paid in full. The circumstance t taxing officers also assessed the mineral rights in said lands Downman in no wise impairs the legal effect of the assessm those same rights against Downman's grantors. It merely that the mineral rights in the lands have been twice assessed same year, and Downman's grantors having paid all of th assessed against them, the State is not entitled either in law or to again collect taxes on the mineral rights in said lands year 1907.

The power of taxation is created to enable officers of gover to raise such money as is necessary to enable the government form its functions. That provision of the State constitution guarantees equality and uniformity in ad valorem taxation, a provision of the Federal constitution which prohibits the confi of property and prohibits the taking of property without due of law have for one of their purposes the protection of citizens unequal and discriminatory burdens of taxation. These c tional guarantees are violated whenever the government in the money necessary to be collected by taxation adopts such a of valuation of property for the purposes of taxation as impo one class of property owners valuations in excess of the values are imposed upon another class of property owners owning th character of property.

149 The individual who owns the mineral rights tract of land and owns the surface estate in the

tract of land, owns, so far as the mineral rights are co
cerned, exactly the same character of property as another in
dividual who owns mineral rights in a tract of land, the su
face estate of which is owned by some other person. Whe
the taxing officers adopt a system of taxation which necessaril
results in the valuation of severed mineral rights at a higher valua
tion than that adopted for valuing mineral rights which have no
been severed, they discriminate in favor of the persons owning th
latter class of mineral rights, and the necessary effect of such a systen
is to impose upon the last mentioned class of property owner
burdens of taxation in excess of the burden imposed upon person
who own mineral rights and surface estates in the same land. We
submit that the findings of fact of the trial court show that this is
precisely what has been done in Llano County in assessing mineral
rights for taxation for the year 1907. It is true, as stated by the
court in its opinion, that the tax assessments show no discrimination.
We have never contended that they did, but the evidence introduced
aside from the assessments themselves, clearly show systematic dis-
crimination against that class of property owners to which appellee
belongs. The taxing officers first assessed all lands of the county
for their full value against the persons who owned the surface estates
therein regardless of whether such persons owned the mineral rights
in their lands or not. After this was done, they decided to assess
for taxation such mineral rights in the county as were owned by
persons who did not own the surface estates in the same lands. The
result is that all lands of the county in which the mineral rights have
not been severed have been assessed for their full values and that all
lands in the county in which the surface and mineral estates have
been severed have been assessed for their full values plus the assessed
value of the mineral estates therein. Because of this system, appellee
Downman is compelled to pay taxes at the rate of $2.00 per acre on
his mineral rights, while his neighbor who owns exactly similar
mineral rights in conjunction with the surface estate in lands
150 is allowed to pay on a valuation two dollars less per acre.
This was substantially the state of affairs which the Supreme
Court of this State decided to be unlawful in the case of Lively vs.
M. K. & T. Ry. Co. The facts of that case show that by the system
adopted by the taxing officers of Dallas County, the property in the
county generally was valued at something less than its full value.
They show that the necessary result of the intangible assets law was
the valuation of the railroad company's property at its full value.
The court held that the system adopted was for this reason prejudicial
and unlawful to the railroad company. The necessary effect of the
system adopted in Llano County is the valuation of lands in which
the mineral and surface estates have not been severed at their full
value, and the valuation of lands in which those estates have been
severed at their full values plus the value of the mineral estate, and
the system is for this reason identical with the system involved in the
Lively case.

We do not contend that the burden is upon the State in a tax
suit to show that the taxing officers have properly valued property

for the purposes of taxation; what we do say is that the burden is o
the State to show that the property attempted to be taxed is subje
to the jurisdiction of the taxing officers. It may be conceded th
the effect of Downman's deeds is to vest in him such minerals as a
situated in the lands described and are capable of being develope
and mined at a profit. If there are no minerals in the lands that a
capable of being developed and mined at a profit, no title to proper
vested in Downman by virtue of the conveyances and no such pro
erty subject to the jurisdiction of the taxing officers of Llano Count
exists.

Suppose, for purposes of illustration, that the taxing officers o
Llano County had assessed against the appellee 160 acres of the Jam
Smith survey in Llano County. Suppose that the evidence o
151 the trial had showed that the appellee held a deed purportin
to convey to him the tract of land mentioned, that the dee
recited that appellee had paid two dollars per acre for the land, an
that no such tract of land was known to exist in the county. Woul
the court hold appellee liable for the taxes so assessed. We say tha
it could not properly do so, because the attempted exercise of th
taxing power in the case supposed would be void for lack of jurisdic
tion over the subject matter rather for lack of a subject matte
within the jurisdiction. So in the case at bar—it may be admitte
for purposes of argument that the legal effect of appellee's convey
ances is to vest in him presently title to minerals capable of being
mined and sold at a profit, if minerals of that character exist in th
lands described in the conveyances. But it is undisputed that n
such minerals are known to exist. How then can the Court find th
existence of the fact which is essential to the attaching of the juris
diction to assess the tax. Its answer, as we understand it, is tha
appellee paid two dollars per acre for the conveyances and that, there
fore, it is warranted in finding that the minerals exist. The pre
sumption that the minerals exist might follow from the circum
stance that appellee paid for the conveyances, in the absence of al
other evidence on the subject. But it can not obtain in the face o
the affirmative and uncontroverted showing that neither appellee
nor any one else knows of the existence in any of the lands of any
of the minerals mentioned in the conveyances, and that the appellee
paid the money mentioned in the deeds merely in the hope that some
thing might be discovered which has not yet been discovered.

If appellee is liable under this state of facts, when will his liability
cease? No amount of unsuccessful prospecting, no number of fail
ures to discover minerals in the lands, will ever overcome the "evi
dence" on which it is found that he owns a taxable interest in the
lands. For it can always be said, just as it is now said, "he paid two
dollars per acre for his deeds, the evidence fails to affirma-
152 tively show that the lands do not contain minerals, and there
fore he is liable for the tax." The result of the court's reason
ing is that appellee must for all future time pay taxes on minerals
which exist only as a result of judicial reasoning, unless the county
officers should at some future day be so improvident as to sell under
foreclosure the mythical minerals to some other unfortunate instead

of collecting the tax judgments against appellee by sale of appellee's other properties.

We submit that such can not be the true rule of law, and that the burden devolved upon the State to show as a jurisdictional fact the existence of minerals in the lands before it could validly enforce liability for taxes against the alleged owner of such minerals.

We have for the purposes of the argument, so far, conceded that the conveyances vested in Downman a present title to such minerals in the lands as are capable of being developed and mined at a profit, if such minerals existed. But such is not the legal effect of the stereotyped instruments. Those instruments simply purported to convey to Downman such minerals in the lands as "may be ascertained to exist and to be capable of being worked for profit." This language does not purport to vest in Downman a present interest in the minerals. It simply provides in effect that if minerals are in the future discovered to exist in the lands, they shall be the property of Downman.

For purposes of illustration, suppose A delivers to B a deed for a tract of land, providing in the deed that it should become effective when C died, or ten years from date. In such a case it would not be contended, we think, that the effect of the deed was to vest in the grantee such a present interest in the land as would be subject to taxation. We think that the deeds of Downman's grantors are similar in nature to the case supposed, in so far as the conveyance of minerals is concerned. In other words, that the instruments
153 themselves do not operate to vest title in Downman to minerals but that after delivery of the instruments something remains to be done before Downman's title accrues, viz: minerals of the character specified in the deeds must be developed. It is true that the deeds do convey to Downman the present right to prospect the land and to sink shafts and to do such other development work as may be necessary in order to discover the supposed minerals, but this is not the estate in the lands for which it is proposed to tax him. The plaintiff's suit must rest on the proposition that there is at present vested in Downman title to minerals and our counter-proposition is that the court found on competent evidence that no such title had vested in Downman, and that said finding is not attacked on this appeal. We therefore respectfully submit that the appellee should be granted a rehearing in this cause, and that on rehearing the judgment of the trial court should be in all things affirmed.

Messrs. Knight Stith, M. D. Slator, Wilburn Oatman, who reside in Llano County, Texas, and Honorable Jewel P. Lightfoot, Attorney General, who resides in Travis County, Texas, are attorneys of record for appellant, the State of Texas, upon whom service of this motion may be had.

(Signed) GREGORY, BATTS & BROOKS,
*Att'ys for Appellee.*

Endorsed: No. 3603. No. 4613. The State of Texas, Appellant vs. R. H. Downman, Appellee. Appellee's Motion for Rehearing Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Feb. 1, 1911. R. H. Connerly, Clerk. Filed in Supreme Court, Mar. 4, 1911, F. T. Connerly, Clerk.

154 *Order Made February 22, 1911, Overruling Motion for Rehearing in Court of Civil Appeals.*

Motion 3603. Cause No. 4613.

STATE OF TEXAS,
vs.
R. H. DOWNMAN,

Appeal from Llano County. Motion for a Rehearing.

Motion is overruled.

155 *Petition — Writ of Error — Supreme Ct. of Texas.*

No. 4613.

THE STATE OF TEXAS, Appellant,
vs.
R. H. DOWNMAN, Appellee.

*Application of R. H. Downman, Appellee, for Writ of Error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.*

To the Supreme Court of The State of Texas:

Your petitioner, R. H. Downman, applies for writ of error to the Court of Civil Appeals of the Third Supreme Judicial District of Texas at Austin for removal of the above styled and numbered cause from said court for revision and review by this Court.

This suit was instituted in the District Court of Llano County, Texas, by the State of Texas against R. H. Downman to recover ad valorem taxes alleged to be due by the latter to the State and to Llano County on certain interests in real property for the year 1907. (Tr. pp. 9-27.) The case was tried by the court without a jury, and resulted in a general judgment in favor of the defendant, Downman. From the judgment so rendered the State of Texas perfected its appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Tr. p. 45.) The latter Court, on January 18, 1911, entered its judgment in said cause, by the terms of which it reversed the judgment of the District Court in favor of R. H. Downman and rendered judgment in favor of the State of Texas for all of the taxes claimed in plaintiff's petition, except certain items of small amount which were conceded by the State on the trial below not to be due and which were claimed in its petition by mistake. On

156 February 1, 1911, the Appellee, R. H. Downman, filed his motion for rehearing in the Court of Civil Appeals. The motion for rehearing presented to the Court of Civil Appeals the points of law hereafter presented in this application as specific assignments of error; and was overruled by the Court of Civil Appeals on February 22, 1911.

*First Proposition.*

The Court of Civil Appeals erred in reversing the judgment of the trial court in favor of Appellee and in rendering judgment in favor of Appellant on the tax claims in suit, because the undisputed evidence in the case sustains the finding of the trial court, that all taxes due for the year 1907 on each of the tracts of land mentioned in plaintiff's petition had been paid in full prior to the trial of this cause, and the trial court for this reason properly rendered judgment for appellee regardless of any other defense presented.

*Statement.*

The defense mentioned in the proposition was specially pleaded on the trial below. (Tr. pp. 33-35). On the trial below the parties executed and submitted as evidence an agreement which, among other things, contained the following:

"III. It is admitted that each of the grantors in each of the instruments above mentioned (conveyances to Downman) respectively and voluntarily rendered for state and county taxes for the year 1907 each of the tracts of land mentioned in plaintiff's petition in the manner hereinafter specified, and that all of said renditions were made by said grantors prior to the time when any of the tax assessments were made against the defendant on which the taxes claimed in this suit are predicated.

"It is further admitted that said renditions by said grantors were accepted by the tax assessor in the form and manner that they were made, that they were carried forward into the tax rolls as made, and that all taxes predicated thereon have been paid by said grantors.

"It is further admitted that all of said tax renditions made by said grantors and the assessments made in pursuance thereof are in similar form, and that either party may show the form of all or same by introducing in evidence any one of said renditions and assessments." (Tr. p. 13).

157 In order to show the form of all of said renditions and assessments, there was introduced in evidence the written rendition and assessment of A. J. M. Bauman (one of Downman's grantors); that rendition and assessment complies in all respects with the requirement of the statute relating to the form for rendering and assessing real estate on which the owner desires to pay all taxes. (St. of facts, pp. 30-31).

After said renditions and assessments were made and accepted by the tax assessor, the Commissioners' Court of Llano County passed an order of date July 12th, 1907, as follows:

"In accordance with the advice and instructions of the Comptroller of the State of Texas, it is considered and ordered by the Court that the assessor of taxes of Llano County be and is hereby directed to assess for taxes all minerals and mineral rights in, upon or attaching to any and all lands in Llano County, where it is found that said minerals and mineral rights are owned by a different per-

son from the owner or owners of the surface estate, and that s
minerals and mineral rights so held and owned be assessed for ta
independent of the surface estate." (Tr. p. 19.)

J. V. Cone, tax assessor of Llano County, testified: "I remem
the circumstance of the Commissioners' court in June passing
order directing me to assess certain mineral rights in the county
made out that list (the list containing the assessments against R.
Downman) in pursuance of that order. * * *

In regard to how I proceeded to make the assessments, and g
information to make them with, after the Commissioner's Co
passed this order a good deal of that information I got from diff
ent parties, most of it I went to the clerk's office and searched t
records for. I was searching the records to see who owned the m
eral rights separate from the surface estates, that was what I was l
ing to see. In making out the list I was governed as to whether
man's name or property should appear on it or not by the circu
stance as to whether or not he owned the mineral rights separ
from the surface estate. In making out the list, I did n
158 include any of the land owners in Llano County who own
the mineral rights in their lands too. I took from the de
records a list of those who owned the mineral rights in lands of oth
people, and who did not own the surface rights. I said I got mo
of the information from the records, most of it. In regard to wh
was the character of the information I got from other parties, we
people would frequently come to me and ask me if we were going
assess the mineral rights where they had been bought by other pe
ties. Numbers of these people would tell me who owned the miner
rights, who they have sold to. My inquiry was directed to ascertai
ing whether or not individuals had sold the mineral rights sep
rate from the surface estate. It was not directed as to whether
not there were minerals on the different tracts of land. I made n
notice of that. My assessments as made under directions of th
order simply selected from the various tracts of Llano County thos
tracts in which the mineral rights had been sold. I assessed thes
mineral rights where they had been sold by the owners of the su
face estates, but did not assess them where they had not been sol
Where the mineral rights had not been sold, where the same owne
owned the mineral rights, I did not make any separate assessment
As to why I made this distinction, well, in the first place, when
made the original assessment, of course, I assessed the lands of th
county as grazing and farming land as they were at that time
When this order was passed, I simply went through the records t
find out where the mineral rights and interests in the land had bee
conveyed. In other words, I followed the order literally. The orde
directed me to assess mineral rights against those persons who hel
mineral rights separate from the surface estate. In regard to how
I classed the land of Llano County for the year 1907, speaking o
agricultural and grazing land as distinct from town property, why
the lands in 1907 were classed principally—they were in two classes,
that is grazing land of the country were in about two classes and,
of course, the farming lands were in about two classes. Only about

four classes. The average pasture lands of the county were valued at $3.00 per acre and the other class was valued at $2.00 straight through. Three dollars was the highest in 1907. About
150 whether I changed the valuation against owners (of the surface estate) when I made these additional assessments *when* prior to the time the Commissioners' Court had passed this order directing me to assess the mineral rights I had already assessed against the owners the taxes on the same land, no. I let it stand just as it was. The majority of the owners had already rendered their lands for taxes, and I made no reduction to the owners of the fee simple title by reason of the fact that they had sold the mineral rights." (St. of Facts, 33-34.)

"A part of them (Downman's grantors) claimed that they had sold the mineral interests, and they thought that they ought to have the lands reduced on that account. I made no difference as to that. I made no distinction at all." (St. of Facts, p. 35.)

The trial judge at the request of the plaintiff below filed a statement of the findings of fact and conclusions of law on which he predicated the judgment in favor of the defendant. The following are the court's findings of fact and conclusions of law pertinent to the proposition under consideration:

Cause Pending in the District Court of Llano County, Texas.

#1721.

STATE OF TEXAS
vs.
R. H. DOWNMAN

In this cause the State of Texas, Plaintiff, has sued R. H. Downman, defendant, to recover certain taxes alleged to be due for the year 1907. After hearing the evidence, I rendered a judgment for the defendant; and at the request of counsel for plaintiff herein, state the findings of fact and conclusions of law upon which that judgment is predicated, viz:

"I. Each of the grantors in each of the instruments hereinabove mentioned (conveyances to Downman) respectively and voluntarily rendered each tract of land mentioned in plaintiff's petition for State and county taxes for the year 1907 in the manner hereinafter specified. All of said renditions were made by said grantors prior to the making of any of the tax assessments against the defendant on which the taxes claimed in this suit are predicated. Said
160 renditions by said grantors were accepted by the tax assessor in the form and manner that they were made. They were carried forward into the tax rolls as made, and all taxes predicated thereon have been paid. All of said tax renditions made by said grantors and the tax asesssments made in pursuance thereof are in similar form and are, respectively, similar in all respects to the renditions and assessments of the lands of A. J. Bauman (one of said

grantors), which renditions and assessments are copied in the t
script and as there copied are hereby made parts of these findi
showing the form of each of the renditions and assessments of
grantors of R. H. Downman.

"Each of said grantors, in rendering said lands for taxation, li
same as 'real estate' and did not employ any language indicatin
intention to exclude or except from said renditions as made any
eral rights or other interest whatever in said lands. They each
making the renditions, whote therein the 'name of the owner of
land', 'the abstract number', 'the number of the survey,' 'the n
of the original grantee and the number of the certificate,' 'the n
ber of acres', and 'the value of the land,' in the manner and f
prescribed by statute for the rendition of real estate.

"Said renditions as made were accepted by the tax assessor
were approved by the Board of Equalization. The rolls as made
and predicated upon said renditions and assessments are in the f
prescribed by statute for making up such rolls showing taxes due
real estate where the same has been rendered for taxation by
owners, and do not in any way, or by any language, indicate
intention to exclude from the taxes shown to be due any interes
the lands listed thereon. * * *

"In assessing lands mentioned in plaintiff's petition for taxa
against the grantors (grantors of Downman) hereinabove mentio
for the year 1907 and in assessing for taxation against the owners
fee simple titles the other lands in the county in which mine
rights had been conveyed to third persons neither the tax asses
the Board of Equalization made any reduction in the v
161 ation of same on account of the fact that mineral rig
therein had been conveyed to third persons, but said la
were, in assessing the taxes of the owners of the fee simple titles
ued exactly as other lands in the county of similar quality were
ued in assessing taxes against those land owners who had not c
veyed to third persons any mineral or other rights in their la
In other words, all lands in the county in which the ownership
the entire fee simple title had not been divided by conveyances
mineral rights to third persons were assessed for taxation at val
corresponding exactly to the values placed on the lands mention
in the plaintiff's petition in assessing same for taxation against
grantors of defendant. (Tr. p. 48-50.)

* * * * * * *

*Conclusions of Law*

* * * * * * *

"4. I conclude that the tax renditions for 1907 made by t
grantors as above stated, and that tax assessments predicated there
embraced all interests in the lands mentioned in plaintiff's petiti
including 'all mines, minerals, quarries and fossils in or under sam
and that all taxes due the State and county on said lands for the ye
1907 have been paid, including all taxes due on the minerals in or
said lands. I further conclude that when the State and county on

assesses the entire interest in the property for a given year and collects taxes thereon, they cannot thereafter reassess the same property, or reassess any interest therein for the same year in the name of another, and cannot again collect taxes thereon for said year, even though the second assessment be against the real owner of the interest assessed." (Tr. p. 53.)

*Authorities.*

Article 5062, Revised Statutes.
Article 5076, Revised Statutes.
Article 5120, Sayles' Civil Statutes.
State vs. A. & N. W. R. R. Co., 94 Texas, 530
Cook vs. Ry., 24 S. W. R., 511.
County vs. Galveston etc. Co., 72 Texas, 509.
County vs. Galveston etc. Co., 72 Texas, 557.
Davis vs. Burnett, 77 Texas, 3.
Commonwealth vs. Chicago &c. C. Ry. Co., 105 S. W. R. 127.
162 Commonwealth vs. Ingalls, 89 S. W. R., 157.
S. A. &c. Co. vs. City, 54 S. W. R., 907.
Spalding vs. O'Callaghan, 76 S. W. R., 189.
Commonwealth vs. Game & Co., 80 Ky., 489.
Commonwealth vs. Chesapeake & O. Ry. Co., 91 S. W. R., 672.

*Argument.*

Article 5062 of the Revised Statutes provides that "Real Property for the purpose of taxation shall be construed to include the land itself * * * and all rights and privileges belonging to or in any wise appertaining thereto, and all mines, minerals, quarries or fossils in or under same."

Article 5076, of the Revised Statutes prescribes how real property shall be rendered for taxation, and provides that the person rendering same shall give (1) the name of the owner, (2) the abstract number, (3) the number of the survey, (4) the name of the original grantee and the number of the certificate; (5) the number of acres, and (6) the value of the land.

The tax renditions made by the grantors of Downman for the year 1907 complied with all the statutory requisites. Those renditions disclose no intention on the part of the grantors to exclude from their renditions any interest in the lands. The renditions as made were accepted by the tax assessor, and the tax rolls predicated thereon showed that Downman's grantors were charged with taxes on their real estate in accordance with said renditions. The taxes so assessed have been paid by Downman's grantors. If the evidence stopped here, it would absolutely require the finding which was made by the trial judge, viz, that all taxes for the year 1907 have been paid on all interests in the lands mentioned in plaintiff's petition; but the evidence does not stop at this point. It goes further and shows without contradiction or dispute that the grantors of Downman were

assessed the full taxable value of their lands, including all of th
mineral rights therein, and that all such taxes have been paid. Th
fact that all of the lands mentioned in plaintiff's petition were a
sessed for taxation for the year 1907 against the persons who ha
conveyed the mineral rights to Downman, and the fact that sai
persons paid the taxes on said lands for said year, would seem
163 to be conclusive answer to the contention of the State that
can again recover taxes for said year on any interests in sai
lands. As was said by the Supreme Court of Kentucky in one o
the cases above cited—"When the State once assesses property for
given year and collects the taxes thereon, it cannot thereafter re
assess the same property for the same year in the name of another
even though the latter be the real owner, and collect the taxes again.

As it is true that the State of Texas has received all of the 190
taxes on the lands mentioned in plaintiff's petition, what equit
has it to again recover a part of those taxes? If the grantors o
Downman had prior to Jany. 1, 1907, conveyed to him the fe
simple title to the lands, and had thereafter rendered the lands fo
taxation for the year 1907, and paid the taxes assessed in pursuanc
of such renditions, no one could plausibly contend that Downman
could also be compelled to pay taxes on said lands for said year.
The same principle which would preclude the State from twice re
covering the 1907 taxes in the case supposed just as effectually pre
vents its recovery under the facts disclosed by this record. In the
case supposed, the State is precluded from twice recovering taxes on
the same land for the same year. In the case at bar, it has received
all the taxes for the year 1907 due on all interests in the lands de
scribed in its petition. It is now seeking to recover again taxes for
that year on certain interests in these lands. A complete and satis
factory answer to its suit is that it is only entitled to receive its
taxes on any particular tract of land for any particular year once;
and that the undisputed evidence in this case shows that it has been
once paid in full all taxes for the year 1907 on every interest in every
tract of land described in its petition in this case.

The Court of Civil Appeals in disposing of the proposition here
presented reaches the conclusion that Downman's grantors did not
pay taxes for the year 1907 on the mineral rights in the lands men
tioned in plaintiff's petition, because the board of equalization of
Llano County did not approve the tax rolls containing the
164 renditions of Downman's grantors until after they had di
rected the tax assessor to assess the mineral interests in the
lands against Downman, and until this direction had been complied
with by the assessor.

This reasoning of the court is unsound because—

(1) The renditions of Downman's grantors were written instru
ments, and the law affixes to them a definite legal effect and mean
ing. After they were made and accepted by the officer of the law
whose duty it is to accept tax assessments, it was incompetent for a
mere board of equalization to alter the meaning of the renditions,
or to change their legal effect, by simply directing the tax assessor

to re-assess against another party certain interests in the lands which had already been assessed against the grantors of Downman.

(2) The tax assessor is the officer vested by law with the power and authority to assess property for taxation. The power, duty and jurisdiction of the board of equalization does not extend to the adding of new property to the assessment list, but merely to the equalizing of values of property assessed, and for this reason the Commissioner's court when sitting as a Board of Equalization is without the power, authority or jurisdiction to direct the assessor to again assess property which he has already assessed, and an assessment made in pursuance of such a direction is a mere nullity. (Cook vs. Railway, above cited.) Says the Court in the case cited "It is only where property has not been rendered that it may be assessed and placed on the unrendered roll, and this must be done by the assessor. Revised Statutes, Article 4711. The law confers no authority whatever upon the board of equalization to direct property, which has been rendered for taxes by the owner, to be listed by the assessor as unrendered property, and such action, being without warrant of law, is absolutely void. Nowhere can be found in our laws a semblance of authority for such board having property, which has been rendered under its proper classification by the owner, taken from its proper list, and assessed under another name, as unrendered property."

(3) Prior to January 1, 1907, Downman's grantors had executed and delivered to him certain written instruments purporting to convey him (not the minerals in the lands) but the mere privi-
165 ilege of prospecting the lands for minerals, and the right to develop, mine and sell as his own such minerals as he might discover that were capable of being developed, mined and sold at a profit. No minerals capable of being developed, mined and sold at a profit have ever been discovered on any of the lands. Consequently it is true, we think, that the deeds had not on January 1, 1907, so operated as to vest in Downman title to any minerals, and that he does not, for that reason, owe any taxes on minerals for that year, and that he will not owe any such taxes for any subsequent year until some substance or substances, of a quality and quantity such as will make them come within th operation of the conveyances, are discovered to exist in, or on, the lands. For this reason we will urge under a subsequent proposition that the trial court was correct in holding that Downman does not at this time own any taxable interest in the minerals. Even if this view be incorrect, it is certainly not so absurd and unreasonable that the court of Civil Appeals is justified in saying that Downman's grantors did not entertain it and act on it as correct when they rendered their lands for taxation for the year 1907. The language of the written instruments which they executed in making their tax renditions show that they did render for taxation all interests in the lands, including all minerals on or in same. The testimony shows that the tax assessor accepted these renditions as meaning what they do mean, and that the valuations placed against the properties included the values of the minerals. It also shows that the State and county have received

every dollar of the taxes so assessed. Consequently, we say that no more taxes for the year 1907 are legally collectable on the lands, even if it be true that Downman during that year owned a taxable interest in the minerals and his grantors paid his taxes for him. The minerals having been rendered for taxation by Downman's grantors at proper value, the valuation thereof as fixed by the renditions having been accepted by the tax assessor, and said valuations never having been changed in any particular by the Board of Equalization, the board merely exceeded its jurisdiction and power, and in legal and practical effect attempted to procure a double
166 tax assessment against the minerals for the year 1907 when it directed the assessor to also assess the minerals against Downman.

We are fully cognizant of the fact that the courts in deciding tax questions must disregard mere refined and theoretical infractions of the law. But we think it is also true that they will correct all invasions of private rights by taxing officers where such invasions are substantial and contrary to the rules both of statute and good morals. The facts here presented show that by the legal effect of written instruments the taxes on the minerals were duly and properly assessed, and that they were paid. There is no contention that the written instruments, through fraud, accident, or mistake, fail to evidence the truth. On the contrary, it affirmatively appears that Downman's grantors not only did render the minerals for taxation, but also intended to so do, that the tax assessor not only did accept their renditions as including the minerals, but also intended to so do, and that the taxes so assessed have not only never been changed in any particular by the board, or under its direction by the assessor, but also that the board and assessor in making the new assessments against Downman on the minerals intended to leave the assessments of the minerals against Downman's grantors just as they had been originally made and accepted by the tax assessor at a time when he did not even know that any conveyance had been made to Downman. The naked case presented is merely this: The State, having once received from Downman's grantors all taxes due on the lands for the year 1907 on the basis of their full value including the minerals, comes into court and again attempts to collect taxes on minerals in the same lands for the same year from Downman. Unless some new and hitherto undiscovered principle of law exempts it from the rules applicable to ordinary litigants, it cannot recover the taxes against Downman, because they have already been paid in full for him.

The answer which counsel for appellant make to the proposition under consideration is terse, original and remarkable. In their argument on page 30 of their brief they say:

"In the first place we do not think it will be presumed
167 that said grantors of appellee rendered the entire interest in the real estate for the reason that the law does not require a person to render property not owned by him, but only requires him to render and pay taxes on property which he owns. Besides, if it is assumed that appellee's interest in the lands described in

plaintiff's petition was taxable as against appellee on the first of January, 1907, we do not think appellee can complain in this case that the owners of the surface have assessed and have paid taxes upon a greater valuation than they should have done."

We answer: (1) That there is no room for "presumption" as to what interests in the lands were rendered by Downman's grantors. These renditions were all in writing and were in the form prescribed by statute for the rendition of all interests in the lands, including the mines, minerals, rocks and fossils in, under or on same. The legal effect of these written instruments is not attacked by appellant on the ground of fraud, accident or mistake. If the renditions stood alone and unexplained, their language would require that construction to be given them which the trial judge adopted. But they are not unexplained by the parole evidence. That evidence clearly shows that the taxing officers accepted the renditions as meaning what by their language they purport to mean, and that, in pursuance of the construction so given the lands rendered were assessed and valued against Downman's grantors just as if no mineral rights therein had ever been conveyed to Downman, and that the taxes so assessed have been fully paid. This conclusively shows that Downman's grantors did render for taxation for the year 1907 the interests in the lands which were subsequently assessed against him for that year; and that the taxes so assessed have already been paid by his grantors; and the circumstance that the assessor by direction of the board of equalization again assessed the minerals in the lands as unrendered property of Downman in no wise alters the fact that the taxes have already been assessed and paid. It merely shows an illegal attempt to collect the same tax twice.

But, say counsel for appellant, the law did not require appellee's grantors to make these renditions or to pay the taxes. This may be true. We will give our reasons for thinking that it is not true under a subsequent proposition. Conceding for the present that it is true, what interest has the State in the matter? Its sole interest is that its taxes shall be assessed and paid. They have been assessed and paid. For aught that appears in the record to the contrary, appellee's grantors may have made the renditions and paid the taxes by virtue of an agreement with appellee that they would do so. Or it may be that they construed their deeds to the appellee as vesting in him no taxable interest in the real estate until the existence of something was discovered therein, the title to which would pass to appellee by the terms of the granting clauses of those instruments. We shall under a subsequent proposition attempt to show that such is the legal effect of the deeds. But, whether this be their correct construction or not is immaterial to the State if all of its taxes have been paid. If the appellee's grantors, without agreement binding them to so do and without any other character of legal obligation for doing so, rendered for taxation interests in property which appellee should have rendered and paid taxes which he should have paid, that is a matter between them and appellee. The payment of the taxes to the State at all events extinguished the right of the State in the premises; and this suit

is neither brought by nor on behalf of appellee's grantors to reimburse them for having paid appellee's debt.

(2) We say that the appellee is not complaining. To the complaint of the appellant he has answers "You are not entitled to again collect taxes for 1907 on the lands described in your petition because all taxes for that year on those lands have been paid to you." The court has heard the evidence on the defense so made and has sustained the appellee's answer. It is the appellant who complains. It says in effect, "I have been paid the taxes in full. But your grantors made the whole payment, whereas part of the money should have been paid by you. I claim the right to collect from you
169 part of the taxes. Your grantors have discharged an obligation for you. You must also discharge it." Unless the recognized and established rules of law applicable to the extinguishment of debts by payment are to be abrogated in favor of the State, this answer carries with it its own refutation, even if it be assumed in the absence of evidence on the subject that appellee's grantors paid his taxes without obligation to do so.

For authorities supporting their argument above quoted, counsel for appellant cite Sections 1 and 14, of Art. VIII of the State Constitution and Articles 5061, 5062 and 5128 of the Revised Statutes.

Those provisions of the Constitution and statutes cited which seem to relate in any degree to the question under consideration are as follows, viz:

Section 1, Article VIII, Texas Constitution: Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law."

Section 14, same article: "All lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer."

Articles 5061, Revised Statutes: "All property, real, personal, mixed, except such as may be hereinafter expressly exempted is subject to taxation and same shall be rendered and listed as herein prescribed."

Article 5062: "Real property, for the purpose of taxation shall be construed to include the land itself * * * and all buildings, structures and improvements, or other fixtures of whatsoever kind, thereon and all of the rights and privileges belonging or in anywise appertaining thereto, and all mines, minerals, quarries and fossils in and under same."

Articles 5126 and 5128, Revised Statutes, provide in substance: (1) That the assessor of taxes shall on the first Monday in June in each year submit to the board of equalization for inspection,
170 approval and correction the list of property rendered to him for taxation; (2) that, after the board shall have acted on the list of rendered property, the assessor shall proceed to assess all unrendered property; and (3) that after the list of unrendered property is prepared, presented to the board of equalization and

approved, the assessor shall make out therefrom the unrendered rolls.

It is difficult to see how these provisions of law can by any conceivable construction furnish support, aid or comfort to appellant's contention; that, after one of the part owners of a tract of real estate has rendered the whole tract for taxation and after the taxes have been regularly assessed and paid in pursuance of such rendition, the State can again collect from the other owner of an interest in the same land taxes on his interest therein for the same year.

Certainly, such a rule is not required by the constitutional mandate that taxation shall be equal and uniform. The very reverse is true. The requirement of equality and uniformity is necessarily violated whenever the State collects taxes twice on the same interest in the same property for the same year. The same may be said of the constitutional and statutory requirement that all property shall be taxed. This is far from equivalent to a command that any interest in property shall be twice taxed for the same year; and the statutory definition of "real estate" contained in Article 5062, Revised Statutes, considered in connection with the undisputed evidence showing the character of the renditions made by Downman's grantors and the character of the tax assessments based thereon, seem to leave no room for argument on the question of whether or not the mineral interests will be twice taxed for the year 1907 if appellant recovers the judgment for which it is contending in this cause. Indeed, the argument of appellant's counsel seems to admit this, but boldly asserts in reply that the appellee should be required to pay the taxes sued for, notwithstanding they have already been once paid, because he personally did not make the renditions under which the former payments were made, and did not personally pay the taxes.

171 As Article 5126 and 5128, Revised Statutes, only authorize the assessor to place on the list of unrendered property those tracts of land which have not been previously rendered, and as the lands on which appellant is seeking to collect taxes in this suit, had been rendered for taxation for the year 1907 without qualification or restriction by Downman's grantors prior to the making out of the unrendered list on which this suit is predicated, we think that those articles also should have been cited by appellee instead of by appellant.

This leaves to be considered no Texas authority cited by appellant except Section 11, of Article VIII, of the State Constitution. That section merely provides for the assessment by the tax assessor of all unrendered property. True it says that "all lands and other property not rendered for taxation by the owner shall be assessed as may be provided by law." But it was obviously the intention of the framers of the Constitution to provide in this section for the assessment by the tax assessor only of such land as had not been rendered for taxation by any one. It was probably not contemplated that any one but the owner of land would render it for taxation; and the word "owner" as used in the section quoted must be construed to mean any person having an interest in the land. If

this is not the proper construction, and if appellant's theory i
correct, that each owner of each interest in land, where differe
estates exist in the same tract, must render his interest for taxatio
and can be compelled to pay taxes on his interest, notwithstandin
another owner of part of the tract has rendered the whole for ta
ation and paid the entire tax thereon, it follows that the framer
of the Constitution did not mean what they wrote when they i
corporated in the same section of the Constitution the direction tha
"taxation shall be equal and uniform;" and that they should hav
added to the requirement that all property should be taxed annuall
the phrase "at least once, if not oftener." It also follows, that the leg
islature misconstrued the Constitution when they provided in
172 Articles 5125 and 5128 of the Revised Statutes for placing o
the unrendered rolls only such property and interests in prop
erty as had not been rendered by any one; and that they should in
stead have provided that each interest in property should be assessed
against the true owners of such interest, regardless of whether some
other owner of another interest in the same property rendered the
whole for taxation or not.

Counsel for appellant also cite to sustain their proposition two
cases from Illinois, viz: Sholl et al. vs. The People, 61 N. E. Rep.
1122, and Coal Co. vs. Baker, 135 Ill., 545.

The statute of Illinois under which these decisions were rendered
did not provide, as does our Texas statute, that an unqualified
rendition of real estate for taxation includes all mines and minerals
in the land, and did provide that when any owner of land conveyed
any mining right therein such right should be taxable separately
from the land.

Under this statute the court held that where it appeared that a
mining right in land had been conveyed to an individual who did not
own the land itself, he could not defeat payment of taxes on that
right by merely showing that the land itself had been assessed against
its owner, and that the land owner had paid the taxes on the land
so assessed. In the case first cited the ruling is expressly placed
on the proposition that the court could not assume, in the absence
of evidence so indicating, and in the face of the presumption that
the tax officer had done his duty lawfully, that the value of the min-
ing right had been included in making the assessment against the
owner of the land. In the case last cited, the evidence of the as-
sessor affirmatively showed that the tax assessor in assessing the
land against its owner had deducted from its total value the value
of the mining right. The Illinois cases, therefore, are different from
the case at bar in two vital respects, viz:

(1) The term "land" or "Real estate" as used in the Illinois as-
sessments did not because of a statutory definition include the mining
right as it does in Texas.

173 (2) The court in the Illinois cases found or presumed from
competent evidence that the value of the mining rights had
been deducted from the total value of the land in making the tax
assessments against the owners of the land; whereas, in the case

at bar, the court has on competent evidence found the facts to exactly the reverse.

The statute of Kentucky under which one of the cases cited abo by us was decided provided that "the holder of the legal title, a the holder of the equitable title, and the bailer or claimant in p session of property shall be liable for taxes thereon, the court construing that statute and in answering a contention similar that here made on behalf of plaintiff said 'it (the statute) nowhe suggests that all of them (legal and equitable owners, etc.) shall liable whether or not any of them has paid the tax. The obje was to insure that the property pay the tax once. It was not deem material to the State which of those made responsible for the t paid it." The court accordingly held that if the tax was once a sessed and paid for a given year, another assessment for the sam year against the same property was void, although the latter asses ment had been made in the name of the true owner, and the form assessment had been made in the name of, and the tax paid by, ot who was not the true owner.

We submit that the authorities cited by us announce the tru and just rule which should govern in the decision of this case, an that there is nothing in any of the authorities cited by appellant counsel which in the least militates against the proposition fo which we here contend.

*Second Proposition.*

The Court of Civil Appeals erred in reversing the judgment o the trial court in favor of appellee and in rendering judgment on the tax claims in suit in favor of appellant, because it does not appear from the evidence that appellee owns any minerals in the lands des cribed in the plaintiff's petition.

174

*Statement.*

The agreement of parties which was introduced in evidence on the trial, in the first paragraph thereof, stated that R. H. Downman was not the owner of any interest in certain of the tracts of land described in plaintiff's petition. Judgment was not rendered against him in the Court of Civil Appeals for any taxes claimed by the State or county on the mineral rights on the tracts of land mentioned in the first paragraph of the agreement, and no complaint is here made of the judgment of the Court of Civil Appeals in so far as it relates to the lands mentioned in the first paragraph of the agreement. The second paragraph of the agreement reads as follows:

"2. Except as herein stated, R. H. Downman was on January 1, 1907, the owner of such interests (if any) in, or with respect to, each of the tracts of land described in plaintiff's petition as were conveyed to him by the instruments hereinafter mentioned, and was not the owner of any other interest in or with respect to said lands, or any part or parts thereof.

The instruments or conveyances above mentioned are (with the

seven exceptions hereinafter specified) all in stereotyped form and all are exactly similar in form and legal effect to the instrument attached to defendant's answer and marked exhibit A, the various stereotyped instruments only differing as to the names of the various grantors, the considerations paid or to be paid, and the description of the property intended to be affected.

The seven instances in which said instruments are not in said stereotyped form are as follows, viz:

Deeds recorded in Llano County Deed Records, as follows:

Volume 11, pages 165, 340 and 619;

Volume 39, pages 149-160;

Volume 40, page 420;

Book 43, page 173.

175 The form of the stereotyped instruments mentioned in the agreement is shown by "Exhibit A, which was attached to the defendant's original answer and a copy thereof will be found in the transcript on pages 36 to 40 inclusive. The granting portion of these stereotyped instruments, in so far as said portion is thought to be relevant to the proposition here under consideration, reads as follows:

"Have granted, sold and conveyed and by these presents do grant, sell and convey unto the said R. H. Downman, of the Parish of Orleans in the State of Louisiana, all metals, ores, granites, rocks stones and other minerals, metalic and non-metalic, organic or inorganic, in place or severed from the earth, which might or could be worked for profit by underground excavations or open workings or both, and the products of any and all such things and substances now known to be, or hereafter found to be in or upon the hereinafter described lands, together with the right to enter upon same and search, dig, and excavate for such things and substances, and the right to use and appropriate so much of the surface of said lands as may be required for any roads, railroads, side tracks and switches, and the construction thereof on or across said lands to be used in the transportation of persons and any freight or property whatsoever from or to any place whereseever, and also the right to make and construct in, on and under said lands, tipples, shoots, shafts, drifts, levels, channels and other underground ways in which may be handled or transported anything whatsoever from or to any place whereseever, whether in said land or elsewhere, and it is expressly agreed and understood that this conveyance passes the right to the use of so much of the surface of said lands as may be required for the preliminary and exploration work and rights of way" (Tr. p. 37).

The seven conveyances which were not in stereotyped form purported to convey to R. H. Downman the minerals in the tracts of land which they respectively described. (Copies thereof will be found on pages 15 to 27 of the Statement of Facts.)

176 R. H. Downman in substance testified: My name is R. H. Downman, and I live in New Orleans. My residence in January, 1907, was in New Orleans, in the State of Louisiana. There do not exist on any lands mentioned in plaintiff's petition developed mines or known deposits of minerals capable of being sold at a profit. I have been trying to find that out. At the time I purchased these

minerals rights, I knew very little about the lands as to whether they contained minerals of the character specified in the deeds except that it was generally understood that there was a showing of mineralization at some points. I mean by a showing of mineralization that there would be floats, the lands would be discolored; the iron stain was about the only thing. The lands mentioned in plaintiff's petition are in a solid body, lying North of the Llano River. I said that some of these tracts show evidence of mineralization, but these tracts do not constitute the only tracts in the county that show such evidence. I know of a great many that I have no interest in at all that show exactly the same. I have never sold a dollar's worth of minerals or rocks of the character mentioned in the deed from these lands at a profit. I do not know whether any exist or not. I cannot give you an idea of what percentage of these lands show mineralization, because personally I have not been on a tenth of the land. Only a part of that tenth shows the evidence I spoke of. Roughly speaking, only a small percentage of the land that I have been over show evidence of mineralization. Take a tract of 160 acres, there would be a lead that runs through that shows iron stain, but probably there would be a very small percentage of that 160 acres showing such evidence probably not ten per cent of it would show that evidence of mineral. Not ten per cent of the tract. (St. of facts, 36-37.)

N. J. Bapt testified in substance: I came to Llano County in 1891, and have been in the mining and real estate business ever since. I represented R. H. Downman in making the purchases of the rights conveyed by the instruments mentioned in plaintiff's petition. I acted as his agent in procuring all of the conveyances.

I am acquainted generally throughout Llano County with the
177 mineral indications. I am not a geologist, but I have given a good deal of attention to this since I have been here. I have been going about the country a great deal. In my opinion there is no difference whatever in all the country. In what we call the granite basin, the lands are all the same. I am not familiar with a great many of the tracts mentioned in plaintiff's petition. In fact I have not been on a great many of them. I have done some work on the Parkhill land. That is all the work that has been done. On the Parkhill land we found some very good float, and I got some men and went down, but we could not find ore at all like the float was. It turned into small bands of iron interjected in the granite, and of course I quit work at the Parkhill. At Section 13, it was exactly the same thing, although the float was very good. The work was stopped because I did not think there was anything there. Outside the work on these two tracts, there has been no development or prospecting. I will state to the court that no minerals or rocks of the character mentioned in those conveyances have been sold by R. H. Downman, or by me, from any of these lands. I do not know of one place where minerals or rocks exist in commercial quantities — that is such as can be sold at a profit. I began examining these lands with reference to their possible production of minerals in 1894, and I have not been doing anything else since that time. You have

to do a great deal of diamond drilling and shafting to find out if there are any veins or deposits of ore in lands—that is the only way that you can find out. (St. of facts, pp. 39-40.)

Dr. W. B. PHILLIPS testified in substance: My name is W. B. Phillips. I am by profession a mining man and mineralogist. I have a map showing what tracts of land in Llano County I have examined. (The witness then designated the tracts.) You can find, as I have found, on most of this land some iron ore float. There is a little on practically all of these tracts. I have done no work on these tracts at all. There has been no work such as pitting, trenching or shafting or underground development of any sort by which a man could judge. As to whether from my examina-
178 tion of the lands shown on the plat I can say whether they do or do not contain any metals, ores or rocks, stones or other metallic or non-metallic substances capable of being worked for profit by underground excavations or open workings or both, I have not seen anything. There are one or two methods by which it can be ascertained whether those lands contain those substances or not—that is by shafting work or diamond drilling. This has not been done on these tracts. My acquaintance with the lands of Llano County is not confined to the Iron Mountain and the tracts that I have shown on this plat. When I was Director of the Mineral Survey in this State for four years, I was over a considerable part of this country. From my knowledge of the lands of Llano County in general, and from the investigations I have made as to the character of land that I have shown on the plat there, I would say that they do not contain any different evidence of minerals from other lands in different portions of the county. (St. of Facts, 40-43.)

A. H. WILLBORN testified: I am County Judge of Llano County, and was holding that position in the year 1907. I presided over the Commissioner's court at the time the tax rolls for the year 1907 for said county were approved. The other members of the Commissioners' Court and myself accepted the assessments as offered by the county assessor for the year 1907, and we heard no evidence at all as to whether the lands assessed against Mr. R. H. Downman contained minerals or not. (St. of facts, p. 44.)

The testimony of J. A. Cone, the tax assessor, has been stated under the preceding proposition. It shows in substance that he made out the tax assessments on which this suit is predicated without making any inquiry, or ascertaining from any source, whether any of the lands mentioned in the petition contained minerals or not. The foregoing is all of the evidence in the record bearing on the subject of whether or not the lands contained minerals capable of being developed and mined at a profit.

179 *Findings of Fact by the Trial Judge.*

"No developed mines exist or existed on January 1st, 1907, on any of the lands mentioned in plaintiff's petition; and no minerals

of any character capable of being worked for profit or having a value are shown to have existed on any of said lands.

"Said lands do not differ, so far as mineral indications are concerned, from the lands in the county general in which the mineral rights have not been conveyed to third persons by owners of the fee simple titles." (Tr. pp. 50-51.)

*Authorities.*

State Constitution, Article VIII, Section 1.
Revised Statutes, Article 5061;
Hughes vs. Vail, 57 Vt., 41;
Jones vs. Wood, 9 Ohio Cir. St., 560;
Grub vs. Beard, Fed. Cases, 5849 (2nd Wallace, Jr., 81);
Groves vs. Hodges, 55 Pa. (5 P. F. Smith), 504;
Carter vs. County Court, 43 L. R. A., 725;
Williamson vs. Jones, 25 L. R. A., 222;
Marshall vs. Mellon, 28 L. R. A., 816;
Williamson vs. Jones, 38 L. R. A., 694;
Clement vs. Young, 40 Pa. (4 Wright), 341;
In re Major, 134 Ill., 19;
State vs. South &c. Oil Co. 42 W. Va., 80.

*Argument.*

In reaching the conclusion that appellee owns taxable mineral interests in the lands mentioned in both the stereotyped and non-stereotyped instruments, the Court of Civil Appeals reasons in substance as follows:

1. Minerals in land may be conveyed by the owner of the entire fee-simple title in the land to another person and, when so conveyed are taxable against the grantee.

2. Notwithstanding the facts that the deeds to appellee by their express language limited the property conveyed to him to such minerals as may be discovered in the lands and as may be capable of being developed and mined at a profit, and notwithstanding the admitted fact that no minerals of that character have been discovered on any lands, the deeds must be held to vest in appellee a present taxable interest in the lands, because—

(a) The instruments are in form similar to ordinary conveyances of real estate;

(b) They were acknowledged and recorded as deeds conveying real estate; and

(c) The grantee paid a valuable consideration for them, and therefore considered that they vested in him valuable rights.

We assent without qualification to the first proposition involved in the reasoning of the Court of Civil Appeals. We do not question in any respect the correctness of the view that it is competent to sever the mineral estate in lands from the surface estate and that when so severed the respective owners of the two estates are taxable for the interests which they own therein.

It is also conceded that the action of the taxing officers of Lla County in assessing the minerals in the lands for taxation and in d termining their value for the purpose of taxation will be presum to have been legally done, and that the burden is not on the plaint in a tax suit to show that the valuations have been correctly made to show anything except that the jurisdictional facts exist which e power the taxing officers to make the assessments sued on.

But it is confidently contended that the existence in the county the property sought to be taxed is a jurisdictional fact which mu be shown by the State, either in the proceedings under which t assessments are made, or in the suit to enforce the assessments an collect the same. The evidence is specific and undisputed that th jurisdictional fact has not been shown by any evidence in any pr ceeding, and that the taxes sued for have been assessed solely becau the mineral rights or licenses to mine such minerals as may be di covered in certain lands are owned by certain persons who do no own the surface estates in the same lands.

The appellee is a non-resident of the State of Texas, and w think that no more personal privilege that he may own to prospec lands in Texas for minerals is taxable in this State but is, o
181 the contrary, taxable in the State of his domicile. But, how ever this may be, it is clear that the assessments against th appellee in Llano County are not assessments against his privilege t prospect lands in that county for minerals, or against his right t develop mines therein. On the contrary, the assessments agains him which are sued on in this case were avowedly and express made against his "mineral rights only" in the lands described i plaintiffs' petition. We, therefore, think that the question to be de termined in passing on the proposition under consideration is — "Doe the mere production and introduction in evidence of the tax roll o a county prove the existence in the county of the property whic the roll purports to show when the existence of such property i directly put in issue by the pleadings and evidence in the cause an it is affirmatively shown that neither the taxing officers who made up and approved the rolls nor any one else knew whether the prop erty existed which they were undertaking to tax or not?" If the appellee had been sued for taxes alleged to be due on a particular tract of land alleged to be located in Llano County, and the evidence had shown that no such tract of land was known to be located in the county, this, we think, would constitute a good defense to the tax due. By a parity — reasoning we think that when the appellee is sued for taxes alleged to be due for minerals which he owns in Llano County, it is a good defense to show that no such minerals are known to exist in the county or on the lands in which the defendant owns his alleged mineral rights.

The evidence not only does not show the existence of the jurisdic tional fact which was essential to the validity of the action of the taxing officers, but, we think, affirmatively shows that such jurisdic tional fact did not exist. In making the tax assessments against the appellee, the assessor of the county affirmatively testified that he had no evidence that any minerals existed in Llano County to which the

appellee's rights had attached. He said that the assessments we made by the purely arbitrary device of searching the deed records deeds conveying to appellee the right to develop such minerals might exist on particular tracts of land. The evidence of the appel and his witness conclusively shows that no one knows whether the exists in the lands mentioned in plaintiff's petition a
182 minerals to which the appellee's rights have attached. The lands have not been developed in any sense; no borings ha been made; no shafts have been sunk; no developed mines exist. T question of whether they contain minerals or not can only be solv by boring or digging beneath the surface, and this has not bee done. If the minerals in fact exist beneath the surface, the appell is the owner of such of them as were conveyed to him by the no stereotyped instruments, but may or may not be the owner of suc minerals as exist in the lands described in the stereotyped instr ments—the latter question depends on the further question whether the minerals in the latter class of lands exist in such quan tities and qualities as will enable the appellee to mine and sell sam at a profit. If minerals exist in any of the lands, they certainly d not exist in all of them. And even in those particular tracts of lan which may possibly contain minerals, the minerals are not uni formly distributed throughout the tracts. But is is positively an definitely known that if found at all, they will be found in compara tively narrow veins occupying only very small portions of the tract in which they exist. All of this being true, the evidence not only fails to show the existence of any property in the county taxabl against the appellee as mineral rights, but it affirmatively and satis factorily shows that the minerals sought to be taxed do not exist o at least ninety per cent of the acreage which is sought to be taxed Notwithstanding this fact, the court of Civil Appeals from the mere circumstance that the appellee has bought and paid on the basis of acreage for the right or privilege of searching the lands for minerals and for the right to own and sell such minerals as his searches may disclose, has found that he owns taxable interests in minerals in each and every acre of the lands mentioned in plaintiff's petition. The finding is not only without evidence to support it, but it is contrary to the undisputed and affirmative evidence contained in the records It is contrary to the truth.

The authorities cited by the appellant on the proposition here under consideration announce either expressly or by necessary implication the following views, viz:

183 1. The production in evidence of tax rolls made up in the manner prescribed by law affords prima facie evidence of the existence of the property sought to be taxed thereon.

2. This evidence is prima facie only, and when the issue of the existence of such property in the jurisdiction of the taxing power is directly raised in a suit for the taxes, the State must show either that the tax officer has already determined that issue on competent evidence, or that the property in fact exists within the jurisdiction.

In this case the issue as to whether or not minerals existed in the lands described in plaintiff's petition was directly raised by the plead-

ings. All that can be said of the evidence on the subject when viewed in the light most favorable to the State is that it shows that there exists on small portions of some of the tracts of lands equivocal evidence of mineralization, and that as to ninety per cent or more of the acreage there not only exists no evidence of mineralization, but it is positively known that in said portions of said lands no minerals exist. That even in the tracts where evidences of mineralization exist, there are no minerals of any character except in narrow veins, and that no one knows whether minerals exist in the narrow veins or not, and that this fact cannot be determined except by borings and excavations which have not as yet been made.

*Third Proposition.*

The Court of Civil Appeals erred in reversing the judgment of the trial court and in rendering judgment for appellant on those tax claims in suit which are predicted upon the alleged ownership by appellee of mineral rights conveyed to him by virtue of instruments in stereotyped form described in the findings of the trial court because the instruments in stereotyped form did not convey to appellee any such interests in lands as are taxable under the laws of Texas, in the face of proof that no minerals capable of being worked and mined at a profit has been discovered on said lands.

184

*Statement.*

Same as under the last preceding proposition and also the following:

The conclusion of law relevant to the proposition here under consideration was as follows:

"The written instruments of the stereotyped form above mentioned conveyed to defendant only such minerals and mineral substances located on the land mentioned in plaintiff's petition as might be ascertained to exist and to be capable of being 'worked for profit by underground excavations, or open workings or both.' There is no evidence that there existed on the lands any physical property to which title has vested in defendant by virtue of the grants contained in the instruments and, as it is agreed that defendant has no interest in the lands, except such interest (if any) as vested in him by virtue of said instruments, I conclude that he did not own on January 1, 1907, any interest in said lands except the incorporeal license or privilege to prospect and develop said lands, and to thereby acquire title to such (if any) of the minerals or mineral substances as might be discovered therein or thereon of the character, quality and quantity specified in the instruments. I further conclude that the tax assessments on which this suit is predicated do not purport to assess for taxation the incorporeal licenses or privileges above mentioned, and that same could not lawfully be assessed against him in Llano County.

As an additional reason why the plaintiff should not recover the taxes claimed under said stereotyped conveyances, I conclude that

under the Constitution and laws of this State before the defendant could be compelled to pay taxes in Llano County on account of any interest in said right or privilege vested in him by the terms of these deeds it would devolve upon the plaintiff to show by evidence
185 that there were minerals or mineral substances on the lands embraced in the deeds that could be worked at a profit by underground excavations or by open workings or both, and that said facts are not established by the evidence. (Tr. pp. 51-52.)

*Authorities.*

Same as under last preceding proposition.

*Argument.*

The stereotyped deeds do not even purport to convey to the appellee all of the minerals in the lands, but only such of the minerals therein as may be capable of being developed, mined and sold at a profit.

The finding of the trial court is that "no minerals of any character capable of being worked for profit or having a value are shown to have ever existed on any of said lands." It was agreed that the defendant had no interest in the lands, except such interests (if any) as vested in him by virtue of his deeds, and on this evidence the trial court concluded that appellee did not own on January 1, 1907, any interest in the lands mentioned in plaintiff's petition.

The court further found that the appellee did own the incorporeal license or privilege to prospect and develop the land, but this license or privilege did not constitute the interest in the land which was attempted to be taxed by the assessments sued on.

In the last preceding proposition, we have advanced the view that the appellee did not own any taxable interest in any lands described in the plaintiff's petition. Under the present proposition, we merely wish to add that even if it be conceded that there was evidence warranting a finding that appellee owns taxable interests in the lands mentioned in the non-stereotyped instruments, it certainly cannot be held that there was any evidence showing that he owned taxable interest in the lands described in the stereotyped instruments,
186 because those instruments only purport to convey to him such minerals in the lands as may be discovered and be capable of being developed, mined and sold at a profit, and the undisputed evidence shows that no such minerals have been discovered on any of the lands.

*Fourth Proposition.*

The Court of Civil Appeals erred in reversing the judgment of the trial court in favor of appellee and in rendering judgment in favor of appellant on the tax claims in suit, because the findings of fact by the trial judge are insufficient as a matter of law to warrant said finding in favor of appellant, and the Court of Civil Appeals

has no jurisdiction on this appeal to reverse or revise said findings of fact because same are not questioned, contested or complained of by appellant under any of its assignments of errors.

*Statement.*

Same as under preceding propositions.

*Authorities.*

Same as under Second Proposition.

*Argument.*

The assignment of errors of the appellant do not in any particular complain that the findings of fact by the trial court are against the weight or preponderance of the evidence. They simply advance the proposition that the undisputed evidence in the case requires different findings. Consequently we say that if there is any evidence in the record to warrant the findings that the appellee owns no taxable mineral rights, the judgment should be affirmed, and further that if there is any evidence in the record warranting a finding that the appellee does not own taxable mineral rights in some of the tracts of land, judgment should not have been rendered against him by the Court of Civil Appeals but the cause should have been remanded for further trial on the question of what
187 lands contained taxable minerals and what lands do not. It appears from the evidence that there certainly are no taxable minerals on many of the tracts of land, and that on the others a large percentage of the acreage certainly contains no taxable minerals. In the face of this evidence the Court of Civil Appeals has found that the appellee owns taxable mineral interests in each and every acre of each and every tract of land described in its judgment, and has rendered judgment against appellee for such taxes. This judgment is in any event erroneous and, even if all of the propositions preceding the present should be overruled, the case should be remanded for another trial in order that the appellee may have an opportunity to show which of the tracts of land certainly do not contain taxable minerals, and what acreage on the other tracts show any evidence of mineralization.

*Fifth Proposition.*

The Court of Civil Appeals erred in reversing the judgment rendered herein by the trial court in favor of appellee and in rendering judgment herein in favor of appellant because the undisputed evidence in the case and the findings of fact predicated thereon by the trial court show that the tax assessments of Llano County for the year 1907 against appellee on which the claims in suit by appellant are predicated are prejudicial to appellee and void because of systematic inequality and lack of uniformity in the plan adopted by the

taxing officers of Llano County for valuing for purposes of taxation mineral rights owned in said county by persons who did not in said year also own the surface estates in the lands to which their mineral rights appertained.

### *Statement.*

The defendant as part of his answer on the trial below pleaded that the tax assessments sued on were void for systematic inequality and lack of uniformity in valuing the mineral rights of the
188 county for taxation. The facts alleged on which the plea was predicated were in substance that the taxing officers of the county had, in valuing lands for taxation, valued those lands of the county in which the mineral rights were owned by persons who did not own the surface estate at uniformly higher rates that the same character of land was valued where the same person owned the mineral rights and the surface estates. (Tr. 33-36).

The testimony of J. A. Cone, the tax assessor, and of A. H. Willborn, the county judge, has already been stated and will not be here repeated. (St. of facts 33-35, and St. of F. p. 44).

This testimony, and the agreement of counsel (Tr. p. 43), show in substance that all of the lands of the county were assessed against the owners of the surface estates for their full value including the value of all minerals in them regardless of whether such owners of the surface estate also owned the mineral rights in the lands or not. They also show that after said assessments were made, a search was made of the deed records of the county and mineral rights in the lands which had already been assessed against the owners of the surface estates were again assessed against the owners of the mineral rights in each tract of land in the county in which the owner of the mineral rights did not also own the surface estate, and that no such new assessments were made against those lands in the county where the owners owned both the surface estate and the mineral rights. It also shows that the original assessments against the owners of the surface estate were in no wise changed, and that the valuations were in no wise reduced, when the new assessments were made against the owners of the mineral rights. It also shows that all of the lands of the county are of the same character so far as mineral indications are concerned, and that those lands of the county in which the minerals and surface estates have not been severed are of the same character, so far as mineral indications are concerned, as are the other lands of the county in which the two estates have been severed.

189 ### *Findings of Fact by the Court.*

On July 12, 1907 (after the renditions by said grantors had been made and accepted by the tax assessor as above stated) the commissioners' court of Llano County, Texas, passed and had entered on its minutes an order of the following terms, viz:

"In accordance with the advice and instruction of the Comptroller

of the State of Texas, it is considered and ordered by the court that the assessor of taxes of Llano County be and is hereby directed to assess for taxes all minerals and mineral rights in, upon or attaching to any and all lands in Llano County, where it is found that said minerals and mineral rights are owned by a different person from the owner or owners of the surface estate in and to all such lands, and that said minerals and mineral rights so held and owned be assessed for taxes independent of the surface estate."

The tax assessor of Llano County made the tax assessments on which this suit is predicated in pursuance of said order of the commissioners' court. In making said assessments, the tax assessor heard no evidence and examined no lands to ascertain whether they in fact contained minerals or not; but merely examined the deed records of the county, and made therefrom a list of all the lands in the county in which the owners had executed and recorded written instruments purporting to grant to others the mineral rights, or the right to search for minerals, in their lands. The list so made contains no mention of any tracts of land in which the entire fee simple titles are held by the same person or persons, or in which mineral rights had not been conveyed by the owners of the fee to third persons. At the head of the list so made the tax assessor wrote the words "Mineral Rights Only", opposite each tract of land shown on the list he wrote the assessed value of fifty cents per acre, the name of the owner of the mineral rights and a description of the land by abstract number, certificate number, original grantee, etc., as
190 shown by the statement of facts. The list so made was submitted to the board of equalization as a roll of unrendered property, was by the board approved as made without any evidence having been heard, and now forms the basis of the claim against the defendant for taxes. Said list was approved by the board contemporaneously with its approval of the rolls showing the assessments made against the grantors of defendant as hereinabove specified. In assessing the lands mentioned in plaintiff's petition for taxation against the grantors hereinabove mentioned for the year 1907, and in assessing for taxation against the owners of the fee simple titles the other lands in the county in which mineral rights had been conveyed to third persons, neither the tax assessor nor the board of equalization made any reduction in the valuation of same on account of the fact that mineral rights therein had been conveyed to third persons; but said lands were, in assessing the taxes of the owners of the fee simple title, valued exactly as other lands in the county of similar quality were valued in assessing taxes against those land owners who had not conveyed to third persons any mineral rights in their lands. In other words, all lands in the county in which the ownership of the entire fee simple title had not been divided by conveyance of mineral rights were assessed for taxation at values corresponding exactly to the values placed on the lands mentioned in plaintiff's petition in assessing same for taxation against the grantors of defendant. (Tr. p. 49-50).

"Said lands (the lands mentioned in plaintiff's petition and other lands in which the surface and mineral estate have been severed)

do not differ so far as mineral indications are concerned from the lands in the county in general in which mineral rights have not been conveyed to third persons by owners of the fee simple titles." (Tr. p. 51).

*Conclusions of Law by the Trial Court.*

The above conclusions make it necessary to render a general judgment for the defendant, and I, therefore, find it unnecessary to reach any conclusion on the question of whether or not the facts disclosed by the record and above stated in my findings of fact render the tax assessments against the defendant void because of unequal and systematic discrimination in the plan by which they were made. (Tr. p. 53).

191

*Authorities.*

Section 1, Article VIII, Texas Constitution;
Section 1, Fourteenth Amendment, Constitution of U. S.;
Lively vs. M. K. & T. Ry. Co. of Texas, 102 Texas, 558;
M. K. & T. Ry. Co. of Tex. vs. Shannon et al., 100 Tex., 396;
Cummings vs. Merchants, etc., Bank, 101 U. S. 153;
Raymond vs. Chicago U. T. Co., 207 U. S. 20;
Taylor vs. L. & N. Ry. Co., 88 Fed. Rep., 850;
Bank vs. Hines, 3 Ohio St., 15;
Ex Parte Fort Smith, etc., Bridge Co., 36 S. W. R. (Ark.) 1060;
Chicago, B. & Q. Ry. Co. vs. Board, etc. (Kan.), 39 Pac. R. 1039;
Andrews vs. King Co., 22 Am. St., 136.

*Argument.*

Under the facts disclosed by the record either one or the other of the following propositions must be true.

1. The tax assessor of Llano county did not, in valuing the lands of the county in which the mineral and surface estates had not been severed include the value of the minerals or,

2. In valuing the lands in which the two estates had been severed he valued the minerals twice, once against the owners of the surface estate and again against the owners of the mineral rights.

If the first proposition be true, there was systematic inequality in the assessments, because there was systematic and uniform failure to value the mineral rights for taxation in all those lands in the county in which the same individual owned the mineral rights and the surface estate. If the second proposition be accepted as correct, the assessments were likewise inequal and discriminatory against the owners of those mineral rights which appertained to the severed lands of the county, and imposed unequal burdens of taxation upon said owners, because the system adopted resulted in a double valuation of mineral rights appertaining to that class of lands.

The findings of fact by the trial court are in no manner attacked on this appeal. Indeed, counsel for appellant on page 6 of their brief affirmatively state that they have no complaint to make of those findings. We have, therefore, refrained from quoting in the statement under the present proposition all of the testimony contained in the record which might be considered pertinent to the present proposition. It is sufficient to say that evidence amply supports the finding by the trial court of the following facts, viz:

Prior to July 12, 1907, the appellee's grantors had rendered for taxation all the lands mentioned in plaintiff's petition. The renditions so made were unqualified and in exact conformity with the requirements of the statute governing the rendition of real estate for taxation where no separate estates have been created in same. The assessments made on said renditions fixed the value of the lands for purposes of taxation against appellee's grantors at figures exactly corresponding to the valuations placed on all similar lands in the county in which the surface and mineral rights had not been severed.

On July 12, 1907, the commissioners' court of Llano county passed an order by the terms of which the tax assessor was directed to assess those minerals and mineral rights in the county which were owned by persons who did not own the surface estate in the land on which such minerals, etc., were located. The assessor obeyed the terms of this order literally. He ascertained, by reference to the deed records of the county, the tracts of land in which the mineral and surface estates had been severed. He assessed the mineral and mineral rights in these tracts, and did not assese minerals or mineral rights in any other lands of the county, notwithstanding the fact that "said lands (against which minerals and mineral rights were assessed) did not differ so far as mineral indications are concerned from the lands in the county in general in which mineral rights have not been conveyed to third persons by the owners of the fee simple titles. (Tr. p. 51.) "No developed mines exist, or existed, on January 1, 1907, on any of the lands mentioned in the plaintiff's petition; and no minerals of any character capable of being worked for profit, or having a value, are shown to have ever existed on any of said lands." (Tr., p. 50.) Neither the tax assessor nor the board of equalization made any reduction in the assessment against Downman's grantors after assessing against Downman the minerals and mineral rights in the lands; and neither authority heard or had, in assessing said minerals and mineral rights, any evidence that said lands contained minerals. The work of the assessor was approved and adopted by the board of equalization without change. The net result of the system adopted is that each tract of land in Llano county in which the mineral and surface estates had been severed was valued for taxation, for the year 1907, at fifty cents per acre more than any similar lands in the county in which both estates were owned by the same person. In other words, an arbitrary system has been adopted and uniformly applied by which all lands in the county in which

separate mineral estates have been created are taxed greater sums than are imposed upon the other lands of the county of exactly similar value and character, in which the surface and mineral estates are owned by the same person or persons.

It seems clear that the tax assessments on which the suit is predicated are void because they were made in violation of three different constitutional mandates. There can be no "equality and uniformity" in the burdens of taxation, no taxing of property "in proportion to its value," and no "equal protection of the laws" where the value of the property taxed is determined solely by the question of what other property the taxpayer owns. Yet, this is an exact statement of the test which was applied in making the assessment against the appellee on which the suit is predicated. There was no inquiry by any taxing officer as to what lands of the county contained valuable minerals. There was no attempt or desire to assess for taxation those minerals or mining rights of the county which are owned by persons who also own the "surface" estate in the lands on which such minerals are situated and to which such mining
194 rights are attached. But on the contrary, the declared and systematic effort was to tax mineral rights in those tracts of land only where the ownership of such rights was severed from the ownership of the "surface" estate. Nothing can, under the terms of our Constitution justify such a system of taxation unless there exists a legal presumption that all owners of mineral lands constantly desire to sell and do sell, the minerals and mining rights in their properties, and that they either always refuse to convey the "surface" estates in conjunction with the mineral rights, or that intending purchasers always refuse to buy the "surface" estate in such lands in conjunction with the mineral rights.

We concede the law to be that it is perfectly competent to sever the surface and mineral rights in any tract of land by conveyance or reservation, so as to put the ownership of the two estates in the same tract of land in different persons. We further concede, that, when the two estates in any particular tract have thus been severed, the "surface" estate is taxable against the person who owns that estate and the mineral right is taxable against the person who owns that right. But we also conceive the law to be that these two estates are equally taxable when they are owned by the same individual, and that a system of taxation which ignores this fact and which subjects to taxation mineral rights when owned by persons who do not own the "surface" estates and exempt from taxation similar rights when owned by persons who also own the surface estates, places an unwarranted and illegal burden on the former class of owners.

But it may be claimed that the mineral rights in other lands in the county were included in the assessments made against the owners of those lands—that, as the assessments made of those lands were unqualified, they included an assessment of the minerals. This is doubtless correct, theoretically. But the fact remains that all lands in the county in which the two estates had been severed were

valued for purposes of taxation at a uniformly higher
195 than the other lands in the county in which the two e
had not been severed. This fact renders this assessme
the higher valuation void because we take it that systematic ine
ity in valuing property for taxation is just as much prohibite
the fundamental law as discrimination in the rates of taxation.

*Sixth Proposition.*

The Court of Civil Appeals erred in rendering judgment in
cause for appellant instead of remanding said cause for a new
because it affirmatively appears from the record that the appe
pleaded facts on the former trial and introduced evidence at
tending to show that the tax assessments of Llano County for
year 1907 on which the claim in suit of appellant is predicated
prejudicial to appellee and void for systematic inequality and lac
uniformity in the plan adopted by the taxing officers of L
County for valuing the mineral rights of said county for purp
of taxation and because it also affirmatively appears from the rec
that the issue so tendered was never decided by the trial court,
court having determined that it was unnecessary to decide
issue because, in its opinion, the appellee was entitled to judgm
regardless of how said issue might be determined.

*Statement.*

Same as under preceding proposition.

*Authorities.*

Same as under preceding proposition.

*Argument.*

The defendant below having pleaded the existence of facts whi
if true, constituted a good defense to the plaintiff's suit and havi
introduced evidence at least tending to show the existence
196 such facts is entitled to a decision on the issue so made
the pleading and evidence. If the Court of Civil Appeals
correct in holding that the facts pleaded do not, as a matter of la
constitute a defense to the suit, then no valid complaint can
made of its action in rendering judgment for the State instead
remanding the cause for a new trial. But if the facts pleaded
constitute a defense, and if there is, as we contend, any evidenc
in the record tending to establish the truth of the allegations, the
it is obvious that instead of rendering judgment in favor of appe
lant the appellate court should remand the cause for another tria

On the whole case, we respectfully and earnestly submit that th
result reached by the judgment of the Court of Civil Appeals is un
just to Mr. Downman. The substantial and relevant facts of th
case are these: He has gone into Llano County and has pai

$200,000 in cash not for minerals which are known to exist, but for the mere privilege of exploring and examining lands in a search for unknown and undiscovered minerals, and for the right to own minerals in the lands that are capable of being developed and mined at a profit if he discovers that such minerals exist. No such minerals have been discovered as yet. It is clearly and definitely ascertained that if any such minerals be discovered in the future, they will be confined to relatively narrow veins on a small percentage of the tracts of land described in the plaintiff's petition, and that no minerals of any character exist on ninety or ninety-five per cent of the acreage described in the plaintiff's petition. The result of the judgment is to compel him to pay taxes on an acreage basis on all of the lands described in the plaintiff's petition—on the lands which admittedly do not contain minerals, as well as on the lands which may or may not contain minerals but which are not known to contain any. Mr. Downman is willing to pay taxes on every
197 pound of mineral having a value which he or anyone else knows to exist on any of the lands. Indeed, he has already paid without contest advalorem taxes on every tract of land in the county in which minerals are known to exist, and taxes on said minerals are not involved in this litigation. It is perfectly evident from the facts in the record that his grantees took the view that as to the other lands he owned no taxable interests in them and would own none until the course of development disclosed the existence of minerals. Entertaining this view, the grantees paid all of the taxes on the land, and the result of the judgment of the Court of Civil Appeals is to compel Mr. Downman to pay taxes also on the mineral interests in the same lands. For these reasons we say that the judgment is unjust, and its injustice is accentuated and emphasized by the further circumstance that Mr. Downman has been discriminated against by the method adopted in making the tax assessments on certain mineral rights in the county. The taxing officers have not made a double assessment against all of the mineral rights but have simply made the double assessment against those mineral rights in the county which are not owned by the owners of the surface estate in the tracts of land to which they appertain. In other words, Downman's mineral rights have been doubly assessed and the resident owners of exactly similar mineral rights have been left untouched. This is not a case where the owner of property is seeking to evade the just burdens of government. On the contrary, it is a case where a public spirited investor is claiming his simple legal rights to abstain from paying ad valorem taxes on property, the title to which has not vested in him and which may not exist. He comes before this court making the single and reasonable request that his legal liability for taxes be determined by the same rules that are applied to the resident taxpayers of the county, and that this court require the local authorities in the county either to value for the purposes of taxation all the minerals in the county, or that they release him from alleged liability to pay taxes on his undiscovered minerals. We very keenly feel that this case presents no merely theoretical or technical defense

to the State's suit for taxes, but that the claim of the State
198 under the facts is affirmatively inequitable and unfair, and in conclusion we submit by way of summary that the application should be granted.

1. Because the taxes sued for have been paid;

2. Because the appellee did not own on January 1, 1907 any property subject to taxation in Llano County by virtue of the tax assessments on which this suit is predicated, and

3. Because said tax assessments on which the suit is predicated was void under those provisions of the Constitution of the State of Texas and of the United States which respectively guarantee to the citizen equality and uniformity of taxation and protection from the confiscation of his property without due process of law, because the lands of Llano County in which the mineral and surface estates have been severed were valued for purposes of taxation for the year 1907 at a different and higher rate than other lands of the county of similar nature and value in which said estates had not been severed.

We further contend, in so far as the suit is predicated on rights alleged to have been vested in appellee by virtue of the stereotyped instruments, that said instruments vest in him no absolute rights to minerals of any character, but only the right to prospect for and discover minerals of commercial value, and that the appellee will by virtue of said instruments be vested with title to none of said minerals until their existence in paying quantities is discovered. In this connection we do not assert the proposition that the privilege to prospect for and to discover and sell minerals is not itself a right which is taxable. We concede that such a right is taxable; but say that the assessments sued on do not purport to tax this right, but that, on the contrary, they undertake to tax an estate in the lands, viz: the minerals therein. We also say that even if the assessments did purport to tax the personal privilege which appellee has to prospect lands for minerals same is not taxable against him in Llano county but at the place of his residence.

We finally say that even if all of these propositions be incorrect, it is obvious from the facts in the record that the tax which
199 the appellee does owe is not a tax to be assessed on an acreage basis against all of the lands described in plaintiff's petition, but that such a tax should be assessed against those particular portions of land which show evidence of containing minerals, and that the cause should, at all events, be remanded for the purpose of enabling the appellee to identify by proof such portion of the lands as certainly do not contain minerals of any character.

The attorneys of record for the appellant in this cause are Messrs. Slator & Oatman, who reside in Llano County, Texas, and the Honorable Jewel P. Lightfoot, who resides in Travis County, Texas.

GREGORY, BATTS & BROOKS,
*Attorneys for Plaintiff in Error.*

Endorsed: App. No. 7160. No. 4613. The State of Texas vs. R. H. Downman. Application of R. H. Downman for writ of error. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Aus-

tin, Texas, Mar. 4, 1911. R. H. Connerly, Clk. Refused. Gregory, Batts & Brooks, Lawyers, Austin, Texas. Filed in Supreme Court, March 4, 1911. F. T. Connerly, Clerk. By J. S. Myrick, Deputy.

Clerk's Office, Supreme Court.

I, F. T. Connerly, Clerk of the Supreme Court of Texas do hereby certify that the above and foregoing forty-four pages contain a true and correct copy of the petition for writ of error now on file in this office, in App. No. 7160, R. H. Downman, (applicant) vs. The State of Texas which said application for writ of error was refused by the Supreme Court of Texas, on the 12th day of March, 1911. Witness my hand and the seal of the Supreme Court of Texas, at the city of Austin, this the 29th day of May, A. D. 1911.

[SEAL.]

F. T. CONNERLY,
*Clerk of the Supreme Court of Texas.*

[Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, May 29, 1911. R. H. Connerly, Clerk.

In Supreme Court of Texas.

200

STATE OF TEXAS
vs.
R. H. DOWNMAN.

Application No. 7160.

*Motion — Rehearing in Supreme Court.*

In earnestly urging a motion for rehearing herein of the application for writ of error applicant calls to the direct attention of the court two propositions not perhaps sufficiently developed, and cites additional authorities:

First. The taxes for the year 1907 on the property which the State claims was owned by R. H. Downman in Llano County were assessed a and paid. The judgment herein compels another payment thereof and imposes on him the costs and expenses of an inequitable suit. Downman had prior to 1907 entered into contracts with certain land owners in Llano County under the terms of which he had the right to acquire rights in certain of said lands. Neither Downman nor the land owners assumed that the former had any present right in the land, and the land owners assessed the land for taxation. These assessments covered all the land and every taxable quality appertaining to it,—and included the minerals which Downman's contract gave him the right to acquire. The land owner gave the assessment as a complete assessment and the assessor accepted it as such. Under the Statute (R. S. 5062) the assessment as given included "all the rights and privileges belonging or in any wise appertaining thereto." The same assessed value was placed upon these lands as

upon other lands of like value in the county, and no contention
made that the assessment was at a figure that was not correct. Th
assessment was by the Board of Equalization accepted and confirmed
and the assessment still stands as correct and approved. The taxe
upon the land so assessed have been paid. After the land, includ
ing any rights that might have been owned by Downman, had been
assessed for taxes, the assessor who was without authority
201 act, under instructions from the Commissioners, who were
without authority to give the instructions, assessed separately
and distinctly from the land the "minerals and mineral rights"
which physically, and under the general principles of law, and
under the statutes of the State, constituted a part of the land. Under
the order referred to and under *th* the assessment made thereunder
the taxation of "minerals" as land and "minerals" as distinct from
land was effected only as to those tracts which had been the sub
ject of contract. Where Downman had acquired the right to ascer
tain the facts with regard to the existence of minerals, the "min
erals", if there were any, were taxed in the land owner, and were
taxed in Downman. Where the right to ascertain the facts with re
gard to the existence of minerals continued in the land owner the
minerals were taxed only once. There was no pretence that the a
sessments of owners with whom Downman had contracted were re
duced or otherwise changed because of the additional assessments of
the minerals nor was there any pretense that a like burden was
placed on any minerals other than those with reference to which
contracts had been made. In its practical effect the assessment
placed upon the one non resident contractor with reference to specu
lative mineral rights a tax to which no one else is subjected.

The tax upon the land (which included the "mineral rights" and
"all rights" appertaining thereto) was paid. The State accepted the
payment and under well established principles had no claim against
any person therefor thereafter. The debt was extinguished. (23 L.
R. A., 120; 6 L. R. A., 691.)

Not only does the Statute declare what should be included for tax
ing purposes under the word "land" or "real estate", but it has been
the uniform practice of the State from the beginning to accept one
assessment which included the rights of every body. Homestead
rights, the rights of a tenant, and a contract right to buy a right of
way may all be taxable rights, but when the owner of the most im
portant estate renders the tract as real estate for taxation and pays
the tax, no other claim has ever before been asserted by the State.

Nor has the State ever before sued the actual owner of land
202 for taxes already paid it by one claiming to own it but whose
title was not good. To recognize the right of the State to
claim an additional payment of taxes in all cases where taxes have
been paid under a mistake of ownership would create utter confusion
with reference to titles.

Taxes on any right Downman might have had have been paid.
The taxing authorities specifically exclude from their demand for
this double tax the like property of other owners.

The judgment of the court in this case compels the payment again

of taxes already paid, discriminates between him and the other owners of rights concerning minerals, places upon his property an unusual and inequitable charge and violates the right which he has as a citizen of the United States in disregard of constitutional provisions.

Second. The judgment for taxes against Downman is erroneous because it has not been shown that he has any property subject to taxation. His right under the contract with land owners was limited to minerals "which might or could be worked with profit." The trial judge found that no minerals of any character capable of being worked for profit or having a value are shown to have existed on any of said land." If one should contract to buy such part of a tract of land as was "irrigable by gravity", he would have a right that would be taxable, but the taxing power would be limited to land so irrigable. If one should contract to sell to another all the land owned by him in Llano County, the latter would have a taxable right which, however, would extend to such land as the first owned in Llano County and not to all the land in such county. The uncontradicted evidence, the finding of the trial judge and the acquiescence of the court of Civil Appeals makes it clear that Downman is taxed upon something he does not own and that his property is taken without due process of law and in violation of the provisions of the Constitution hereinbefore cited. The assessor had a right to assess only unrendered property. If there was no such property, there was no right to act. If the State asks for judgment for taxes upon property, the existence of such property must be established.

Third. There was error in the action of the Court of Civil Appeals in reversing and rendering judgment. The defendant
96: pleaded that the assessments which were the basis for the State's demand were void for systematic inequality and lack of uniformity in valuing mineral rights in the county. This court has recognized the fact that the provisions in our Constitution which demand "Equality and uniformity in taxation" are not utterly futile by holding that the property of a railroad company can not be taxed at full value while other property in the county is assessed at less than full value. No trouble should be experienced in holding that property of a non-resident should not be taxed at more than full value, while like property of the resident is not taxed at all. The trial judge by holding that Downman had no taxable property, and further holding that if he had, the taxes thereon had been paid, rendered it unnecessary to pass upon defendant's appeal to the Constitution, and he so declared. To deny the defendant the right to show that his constitutional rights have been invaded would take away his property without due process of law and infringe the other constitutional rights hereinbefore invoked.

Applicant's attorneys are so strongly impressed with the belief that the judgment of the Court of Civil Appeals is erroneous that they earnestly ask that the record herein be again examined and that a rehearing be granted.

Respectfully,

GREGORY, BATTS & BROOKS,
*Attorneys for Applicant.*

Endorsed: Mo. No. 2512. No. 7160. State of Texas vs. R. H. Downman. Overruled. 5/3/1911. Motion for rehearing of Application for Writ of Error. Filed in Supreme Court, April 27, 1911. F. T. Connerly, Clerk. By J. S. Myrick, Deputy. Gregory, Batts & Brooks, Lawyers, Austin, Texas.

204 Clerk's Office, Supreme Court.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing three pages contain a true and correct copy of the original motion for rehearing in App. No. 7160, R. H. Downman, (Applicant) vs. The State of Texas, now on file in this office.

Witness my hand and the seal of the Supreme Court of Texas at the City of Austin, this May 29th, 1911.

[SEAL.] F. T. CONNERLY,
*Clerk of the Supreme Court.*

(Endorsed:) Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 29, 1911. R. H. Connerly, Clerk.

205 *Order Supreme Court Refusing Writ of Error.*

In Supreme Court of Texas.

R. H. DOWNMAN
vs.
THE STATE OF TEXAS.

From Llano County, 3rd District.

APRIL 12TH, 1911.

This day come on to be heard the application of R. H. Downman for a writ of error to the Court of Civil Appeals for the Third District, and the same having been duly considered, it is ordered that said application be refused. That the applicant R. H. Downman pay all costs incurred on this application.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on the application for writ of error in the above styled cause.

Witness my hand and the seal of said Court, this the 5th day of May, A. D. 1911.

F. T. CONNERLY, *Clerk.*
[SEAL.] By J. S. MYRICK, *Deputy.*

Mo. for rehearing overruled May 3rd, 1911.

Endorsed: Application No. 7160. R. H. Downman vs. The State of Texas. Copy of Judgment in Supreme Court. Application for Writ of Error. Refused. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas. May 5, 1911. R. H. Connerly, Clerk.

206 *Bill of Costs Supreme Court.*

Clerk's Office, Supreme Court.

No. 7160.

R. H. DOWNMAN
vs.
STATE OF TEXAS.

Certified Copy Bill of Costs, Supreme Court.

| | |
|---|---|
| Filing Application | .50 |
| Docketing Petition | .50 |
| Entering Appearance of Counsel | .50 |
| Filing Two Briefs | .60 |
| Filing Three Papers | .90 |
| Entering Orders | 1.00 |
| Entering Judgment on Application | 1.00 |
| Certified Copy of Judgment | 1.00 |
| Taxing Costs of Application | .50 |
| Certified Copy Bill of Costs | 1.00 |
| Filing and Entering Motion | .55 |
| Total | $8.05 |

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and seal of said Court, at Austin, this the 5th day of May, 1911.

[SEAL.] F. T. CONNERLY, *Clerk.*

Endorsed: Application, No. 7160. Certified Copy Bill of Costs in Supreme Court, Austin. R. H. Downman, vs. State of Texas. $8.05. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas. May 5, 1911. R. H. Connerly, Clerk.

207 *Petition for Writ Error to U. S. Sup. Court.*

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

No. 4613.

THE STATE OF TEXAS, Appellant,
vs.
R. H. DOWNMAN, Appellee.

Petition for Writ of Error, Presented to the Honorable W. M. Key Chief Justice of said Court.

Your petitioner, R. H. Downman, a citizen of the Parish of Orleans, in the State of Louisiana, respectfully shows to the court:

That on the 6th day of March, A. D. 1909, The State of Texas instituted suit in the District Court of Llano County, Texas, against him to recover ad valorem taxes which he was alleged to owe the State and Llano County for the year 1907, on certain mineral interests alleged to be owned by him in the lands of other persons, and to foreclose the tax lien on said mineral interests in said lands.

Among other answers, the defendant specially pleaded to the State's petition, in substance, that the tax assessments on which the tax claims in suit were predicated were void, because the taxing officers of Llano County, whose duty it was to make the tax assessments of property in said county, and to value the property in said county for purposes of ad valorem taxation for said year, had not valued and assessed for taxation all mineral rights in the county, but that they had on the contrary adopted a uniform system of assessing mineral rights for taxation and of fixing the taxable values thereof, and that, under said system as adopted and put in operation, only those mineral rights in the county which were owned
208 by persons who did not own the surface estates in the lands to which such rights appertained were valued and assessed for taxation, and that the exactly similar mineral rights appertaining to all lands in the county which were owned by persons who also owned the surface estates in the lands to which such rights appertained were not valued and assessed for taxation. He further alleged in said answer, that, if, as a matter of fact, all mineral interests in the lands of said county had been assessed for taxation for said year, then only those mineral rights which appertained to lands that were otherwise owned by third persons were valued for purposes of taxation, and that all other mineral rights in said county, viz: those that were owned by persons who also owned the surface rights in the lands to which said mineral rights appertained, were not valued for purposes of taxation in making the tax assessments of lands in said county for said year.

He further alleged in said answer that all of the tax assessments on which were predicated the tax claims involved in the suit

against him were assessments against mineral rights which he owned in the lands of other persons; and that, because of the rule or system adopted for the valuation of mineral rights in the lands of said county for said year, and that because of the uniform and systematic failure and refusal of the taxing officers of the county to value or assess for taxation for said year any mineral rights in the county except those mineral rights which were owned in lands of third persons (such as the alleged mineral rights owned by Downman), said tax assessments on which he was sued were systematically ununiform and unequal, and that they unjustly, arbitrarily and systematically discriminated against him and all other persons who owned mineral privileges in the lands of others in said county, and that said system of assessments and valuations imposed upon the latter class of persons greater burdens of taxation than upon any other class of persons owning similar rights of similar value in said county; because the real, substantial and practical effect of said system for assessing and valuing mineral rights, as carried out by said taxing officers, was to unlawfully exempt from taxation those mineral rights that were owned by persons who owned the surface estates in the lands to which such mineral rights appertained, and to unlawfully place said burdens of taxation upon the other taxable property in the county; and that for said reasons said tax assessments against him and against the other persons of the class to which he belonged were null and void, because to enforce them would result in the enforcement of an unequal and ununiform system of taxation, and in the taking of his property and the property of all other individuals of the class to which he belonged, without compensation and without due process of law, and would violate his rights created by those provisions of the Constitution of the United States that guarantee to all citizens the equal protection of the laws, that the property of citizens shall not be taken without due process of law, and that they shall not be deprived of rights, privileges or immunities secured to other citizens.

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The case was tried in the District Court without a jury, and the trial judge filed therein his findings in which he found therein, in substance, the following facts:

1. The lands of Llano County in which the surface and mineral estates have been severed do not differ so far as mineral indications are concerned from the lands in the county in general in which mineral rights have not been conveyed to third persons by owners of the fee simple titles; and none of the lands described in the conveyances to Downman, so far as is known, contain any minerals of the character mentioned in the conveyances under which Downman holds.

2. Prior to July 12, 1907, persons in the county who owned lands therein, or who owned the surface estates in lands, had rendered all of the lands of the county for taxation. The renditions of all of said persons were unqualified, and manifested no intention of excluding therefrom any mineral rights or other interests in the lands rendered. The renditions as made were accepted by the taxing officers of Llano County, and all of the lands

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were uniformily valued in making the assessments against the persons so rendering the same. No reductions in value of any of said lands were made because of the circumstance that mineral rights therein had been conveyed to Downman or any other third person. All taxes predicated on said renditions and assessments had been paid prior to the trial of this cause.

3. On July 12, 1907, the Commissioners' Court of Llano County, Texas, passed and had entered on its minutes, an order, in substance, directing the assessor of taxes of Llano County to assess for taxes "all minerals and mineral rights in, upon or attaching to any and all lands in Llano County where it is found that said minerals and mineral rights are owned by a different person from the owner or owners of the surface estates."

The tax assessor of Llano County made the tax assessments on which this suit is predicated in pursuance of said order of Commissioners' Court. In making said assessments, the tax assessor merely examined the deed records of the county, and made therefrom a list of all lands in the county in which the owners had executed and recorded instruments purporting to grant to others the mineral rights, or the right to search for minerals, in their lands. He made no inquiry and heard no evidence to determine whether said lands or any of them contained minerals or not; and, so far as known to him, or to any one else, none of said lands contain minerals. The list so made contains no mention of any tracts of land in which the entire fee simple titles are held by the same person or persons, or in which mineral rights have not been conveyed by the owners of the fee to third persons. The list so made was submitted to the Board of Equalization as a roll of unrendered property, was by the Board approved as made, and now forms the basis of the claim against Downman for taxes. In assessing the lands mentioned
211 in plaintiff's petition for taxation against Downman's grantors for the year 1907, and in assessing for taxation against the owners of the fee simple titles the other lands of the county in which mineral rights had been conveyed to third persons, neither the tax assessor nor the Board of Equalization made any reduction in the valuation of same on account of the fact that mineral rights therein had been conveyed to third persons; but said lands were, in assessing the taxes of the owners of the fee simple titles, valued exactly as other lands in the county of similar quality were valued in assessing taxes against those land owners who had not conveyed to third persons any minerals or mineral rights in their lands. In other words, all lands in the county in which the ownership of the entire fee simple titles had not been divided by conveyance of mineral rights were assessed for taxation at values corresponding exactly to the values placed on the land mentioned in plaintiff's petition in assessing same for taxes against the grantors of Downman; and the mineral interests in the latter class of lands were also valued and assessed for taxation against Downman.

The trial court rendered a general judgment in favor of the defendant, Downman. This judgment was predicated on the finding that Downman owned no taxable interests in the lands, and on the

further finding that all taxes on the lands for the year 1907, including taxes on the mineral interests therein, had been paid by his grantors. The court expressly declined to decide the question whether or not the tax assessments were, because of the above stated facts, violative of Downman's constitutional rights and void for inequality and lack of uniformity.

From the judgment rendered in favor of defendant, plaintiff, the State of Texas, perfected its appeal to the Court of Civil Appeals of Texas, for the Third Supreme Judicial District and said court on said appeal, on January 18, 1911, reversed the judgment of the District Court and rendered judgment in the cause in favor of the State of Texas for all the taxes claimed. In reversing said judgment of the District Court, and in rendering judgment in
212 favor of the State of Texas, said Court of Civil Appeals directly and affirmatively held that the facts above stated did not render said tax assessments void. That said tax assessments and the system under which they were made, were in no particular violative of any rights guaranteed to Downman by the Constitution of the United States, and expressly held valid the authority exercised by the taxing officers of Llano County in making said assessments, and that said exercise of authority was not repugnant to any provision of the Constitution of the United States, and decided in favor of the validity of said authority.

That on the 1st day of February, A. D. 1911, your petitioner, R. H. Downman, filed a motion for rehearing of said cause in said court of Civil Appeals, and that on the 18th day of February, A. D. 1911, said motion was by said court in all things overruled.

That thereafter on the 25th day of February, A. D. 1911, your petitioner filed in said court of Civil Appeals his application to the Supreme Court of Texas for a writ of error to revise and reverse said judgment of the Court of Civil Appeals, and that on the 11th day of April, A. D. 1911, said Supreme Court of Texas in all things refused to grant said application.

That on the 26th day of April, A. D. 1911, your petitioner filed in the Supreme Court of Texas his motion for rehearing of said application for writ of error, and that on the 3rd day of May, A. D. 1911, said Supreme Court in all things refused and overruled said motion for rehearing.

That thereafter the record in said cause was by the clerk of said Supreme Court of Texas returned to and filed in the office of the clerk of the Court of Civil Appeals; and that the judgment of said Court of Civil Appeals in said cause is a final judgment, and said court is the highest court of the State of Texas in which a decision in the suit could be had, and is now the custodian of the record in said cause.

That petitioner is aggrieved by the judgment of said Court of Civil Appeals, and the proceedings had prior thereto in said
213 cause, and that in said judgment and proceedings errors were committed to the prejudice of petitioner, because of said suit titles, rights, privileges and immunities were specially set up and claimed by petitioner under the Constitution of the United States,

and the decision of the Court of Civil Appeals in said suit was ag
said titles, rights, privileges and immunities so specially set up
claimed, and because in said suit there was drawn in question
validity of an authority exercised under the State of Texas o
ground of its being repugnant to the Constitution of the U
States and said decision was in favor of its validity; all of whic
pears from the transcript of the proceedings in said court and
accompanying file papers and copies of the orders of the diff
courts, all of which are on file in said Court of Civil Appeals a
which the Chief Justice of that Court is hereby respectfully refe
with the request that they be considered in connection with and
part of this application.

Petitioner files herewith Assignments of Error, and prays
same be considered as part hereof.

Wherefore your petitioner prays for the allowance of a wri
error to the Court of Civil Appeals for the Third Supreme Jud
District of the State of Texas, which now has the record in said
for the removal of said suit to the Supreme Court of the Un
States to the end that the errors in said judgment and proceed
in said suit may be duly corrected, and that full and speedy jus
may be done to the parties aforesaid in this behalf, and that
amount of the bond be fixed, and that the transcript of the rec
proceedings and papers in this cause duly authenticated may
sent to the Supreme Court of the United States, and petitioner p
for citation and supersedeas.

Dated, this 12th day of May, A. D. 1911.

GREGORY, BATTS & BROOKS,
*Attorneys for Petitioner R. H. Downman.*

Endorsed: No. 4613. The State of Texas, Appellant vs. R
Downman, Appellee. Petition for Writ of Error. Filed in Co
of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, M
19, 1911. R. H. Connerly, Clerk.

214 *Order Allowing Writ of Error.*

In the Court of Civil Appeals for the Third Supreme Judicial D
trict of Texas at Austin.

**1613.**

THE STATE OF TEXAS, Appellant,
vs.
R. H. DOWNMAN, Appellee.

**Order Allowing Writ of Error.**

Upon motion of the attorneys for the appellee in the above style
and numbered cause, R. H. Downman, and upon his filing a petitio
for writ of error and assignments of error, it is ordered that the wri
of error be and is hereby allowed in accordance with the prayer o

his petition, and the amount of bond on said writ of error is hereby fixed at $1000.00, and on the giving of same, the judgment of this court shall be superseded. Allowed this May 19th, 1911.

W. M. KEY,
*Chief Justice of the Court of Civil Appeals,*
*Third Supreme Judicial District.*

Endorsed: No. 4613. The State of Texas, Appellant, vs. R. H. Downman, Appellee. Order allowing Writ of Error. Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas, May 19, 1911. R. H. Connerly, Clerk.

215 *Assignment of Errors.*

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

4613

THE STATE OF TEXAS, Appellant,
vs.
R. H. DOWNMAN, Appellee.

Assignment of Errors.

Now comes R. H. Downman, plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Court of Civil Appeals of the State of Texas for the Third Supreme Judicial District in the above entitled cause, there is manifest error in this, to-wit:

1. The Court erred in holding that the system of assessing and valuing property in Llano County for purposes of ad valorem taxation as adopted and executed by the taxing officers of said county for the year 1907, under which all mineral rights owned in the county by persons who also owned the surface estates in the lands to which such mineral rights appertained were uniformly exempted from the burdens of taxation through the device or policy of failing to assess said rights for taxation, and under which the burdens of said taxation were placed upon the other taxable property of the county, including the petitioners' property did not violate plaintiff in error's rights under the provisions of the Fourteenth Amendment to the Constitution of the United States for that the State of Texas and Llano County, by and through the adoption and execution of said system of assessing property for purposes of ad valorem taxes, assume and seek:

(1) To deprive plaintiff in error and certain other citizens of the United States of the rights and privileges secured
216 to other citizens of the United States and of the State of Texas;

(2) To deprive plaintiff in error and other citizens of the United States of their property without due process of law;

(3) To deprive and deny to the plaintiff in error and certain citizens and persons within the jurisdiction of the State of Texas of the equal protection of the laws.

2. The court erred in holding that the system of valuing property in Llano County for purposes of ad valorem taxation as adopted and executed by the taxing officers of said county for the year 1907, under which all mineral rights owned in the county by persons who also owned the surface estates in the lands to which said mineral rights appertained, were uniformly exempted from the burdens of taxation through the device or policy of failing to value said rights for taxation and under which the burdens of taxation which should have lawfully been borne by said class of mineral rights were placed upon the other taxable property of the county, including petitioner's taxable property, did not violate plaintiff in error's rights under the provisions of the Fourteenth Amendment to the Constitution of the United States, for that the State of Texas and Llano County by and through the adoption and execution of said system of valuing property for purposes of ad valorem taxation assume and seek;

(1) To deprive plaintiff in error and certain other citizens of the United States of rights and privileges secured to other citizens of the United States and of the State of Texas;

(2) To deprive plaintiff in error and other citizens of the United States of their property without due process of law;

(3) To deprive and deny the plaintiff in error and certain citizens and persons within the jurisdiction of the State of Texas of the equal protection of the law.

3. The Court erred in holding that by the said plan and scheme adopted by the taxing officers of Llano County for assessing and valuing mineral rights in said county for taxation for the year 1907, plaintiff in error is not deprived of rights, privileges and im-
217 munities secured to other citizens of the United States and of the State of Texas by the Constitution and laws of the United States.

4. The court erred in holding that by the said plan and scheme adopted by the taxing officers of Llano County for assessing and valuing mineral rights in said county for the year 1907, the plaintiff in error will not be deprived of property without due process of law.

5. The court erred in holding that by the said plan and scheme adopted by the taxing officers of Llano County for assessing and valuing mineral rights for the purpose of taxation for the year 1907, the plaintiff in error will not be denied the equal protection of the law.

Wherefore plaintiff in error says that in said suit he specially set up and claimed, as above specified, rights, titles, privileges and immunities under the Constitution of the United States, as above specified, and that the decision of said Court of Civil Appeals in said suit was erroneously against said titles, rights, privileges and immunities so specially set up and claimed, and that because of said suit there was drawn in question, as above specified, the validity of an authority exercised under the State of Texas on the ground of its being repugnant to the Constitution of the United States, and that

the decision of said Court of Civil Appeals was erroneously in favor of the validity of said authority.

GREGORY, BATTS & BROOKS,
*Attorneys for Plaintiff in Error, R. H. Downman.*

Endorsed: No. 4613. The State of Texas, Appellant vs. R. H. Downman, Appellee. Assignment of Errors. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, May 19, 1911. R. H. Connerly, Clerk.

218 *Bond in U. S. Supreme Court.*

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

R. H. DOWNMAN, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

Error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

Bond for Writ of Error.

Know all men by these presents: that we R. H. Downman, as principal, and The United States Fidelity & Guaranty Co. as sureties, are held and firmly bound unto the State of Texas in the full and just sum of $1,000. (One Thousand Dollars) for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents:

Sealed with our seals and dated this — day of May, A. D. 1911.

Whereas on the 18th day of January, A. D. 1911, in the Court of Civil Appeals for the Third Supreme Judicial District of Texas in the suit pending in said court between R. H. Downman and the State of Texas, being cause No. 4613, in said court, a judgment and decision was rendered against R. H. Downman, and a motion for rehearing filed in said court by R. H. Downman was overruled by said court on the 18th day of February, 1911, and the said R. H. Downman has presented and obtained a writ of error from the Supreme Court of the United States to reverse the judgment and decrees rendered in said cause by the Court of Civil Appeals
219 for the Third Supreme Judicial District of Texas, and has filed a copy thereof in the clerk's office of said court to reverse the judgment and decisions in the aforesaid court, and a citation directed to the State of Texas, citing and admonishing it to be and appear at the Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof.

Now therefore, the condition of the above obligation is such that if the said R. H. Downman shall prosecute the said writ of error to effect and answer all damages and costs if he fails to make his

appeal good, then the above obligation shall be null and void, o
wise to remain in full force and effect.

R. H. DOWNMAN,
THE UNITED STATES FIDELIT
[SEAL.] & GUARANTY CO.,
By WM. H. STACY, *Att'y in Fact, and*
JNO. W. ROBBINS, *Att'y in Fact.*

Approved by
W. M. KEY,
*Chief Justice Court of Civil Appeals,*
*Third Supreme Judicial District of Texas.*

Endorsed: R. H. Downman, Plaintiff in Error vs. State of T
Defendant in Error. Bond for Writ of Error. Filed in Cour
Civil Appeals 3rd Supreme Judicial District Austin, Texas, May
1911. R. H. Connerly, Clerk.

220 *Original Citation in Error.*

(Original.)

THE UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at
Supreme Court of the United States at Washington within thi
(30) days from the date hereof pursuant to a writ of error filed
the Clerk's office of the Court of Civil Appeals for the Third
preme Judicial District of the State of Texas wherein R. H. Dow
man is plaintiff in error, and you are defendant in error to sh
cause, if any there be, why the judgment rendered against
said plaintiff in error, as in said writ of error mentioned, shou
not be corrected, and why speedy justice should not be done
the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of t
United States, this 20th day of May, in the year of our Lord, O
Thousand Nine Hundred and eleven.

[SEAL.] (Signed) W. M. KEY,
*Chief Justice of the Court of Civil Appeals for the*
*Third Supreme Judicial District of Texas.*

Attested with the seal of the United States Circuit Court f
the Western District of Texas, this 20th day of May, 1911.

[SEAL.] (Signed) D. H. HART,
*Clerk of the Circuit Court of the United States*
*for the Western District of Texas.*

Service accepted.

June 1, 1911. O. B. COLQUITT, *Governor.*

JEWEL P. LIGHTFOOT,
*Attorney General.*

June 1st, 1911.

JAS. D. WALTHALL,
*Ass't Att'y Gen'l.*

Endorsed: Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 22, 1911. R. H. Connerly, Clerk.

221 *Duplicate Citation in Error.*

(Duplicate.)

THE UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty (30) days from the date hereof pursuant to a writ of error filed in the Clerk's office of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas wherein R. H. Downman is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 20th day of May, in the year of our Lord, One Thousand Nine Hundred and eleven.

[SEAL.] (Signed) W. M. KEY,
*Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas.*

Attested with the seal of the United States Circuit Court for the Western District of Texas, this 20th day of May, 1911.

[SEAL.] (Signed) D. H. HART,
*Clerk of the Circuit Court of the United States for the Western District of Texas.*

Service accepted.

June 1, 1911. O. B. COLQUITT, *Governor.*

June 1st, 1911. JEWEL P. LIGHTFOOT,
*Attorney General.*

JAS. D. WALTHALL,
*Ass't Att'y Gen'l.*

Endorsed: Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 22, 1911. R. H. Connerly, Clerk.

222 *Original Writ of Error.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorables the Judges of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, Greeting:

Because, in the record and proceedings, as well as in the rendition of the judgment, of a plea which is in the said Court of Civil Appeals for the Third Supreme Judicial District of Texas, before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in said suit between R. H. Downman, plaintiff in error, and the State of Texas, defendant in error, which judgment reversed the judgment of the District Court of Llano County in favor of R. H. Downman, and rendered judgment in favor of the State of Texas against R. H. Downman, being cause No. 4613, in said court of Civil Appeals for the Third Supreme Judicial District of Texas, wherein was drawn in question the validity of an authority exercised under the State of Texas on the ground of its being repugnant to the constitution of the United States, and the decision was in favor of its validity; and wherein rights, titles, privileges and immunities were specially set up and claimed by plaintiff in error under the constitution of the United States, and the decision of said Court of Civil Appeals was against said titles, rights, privileges and immunities so specially set up and claimed; a manifest error hath happened to the great damage of R. H. Downman as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the
223 record and proceedings aforesaid with all things concerning same, to the Supreme Court of the United States, together with this Writ so that you have the same in the said Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 19th day of May, in the year of our Lord, 1911.

[SEAL.] D. H. HART,
*Clerk of the Circuit Court of the United States for the Western District of Texas.*

Allowed:
W. M. KEY,
*Chief Justice Court of Civil Appeals, Third Supreme Judicial District of Texas.*

Endorsed: Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 19, 1911. R. H. Connerly, Clerk.

224 *Duplicate Writ of Error.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorables the Judges of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, Greeting:

Because, in the record and proceedings, as well as in the rendition of the judgment, of a plea which is in the said Court of Civil Appeals for the Third Supreme Judicial District of Texas, before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in said suit between R. H. Downman, plaintiff in error, and the State of Texas, defendant in error, which judgment reversed the judgment of the District Court of Llano County in favor of R. H. Downman, and rendered judgment in favor of the State of Texas against R. H. Downman being cause No. 4613, in said court of Civil Appeals for the Third Supreme Judicial District of Texas, wherein was drawn in question the validity of an authority exercised under the State of Texas on the ground of its being repugnant to the constitution of the United States, and the decision was in favor of its validity; and wherein rights, titles, privileges and immunities were specially set up and claimed by plaintiff in error under the constitution of the United States, and the decision of said Court of Civil Appeals was against said titles, rights, privileges and immunities so specially set up and claimed; a manifest error hath happened to the great damage of R. H. Downman as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the
225 record and proceedings aforesaid with all things concerning same, to the Supreme Court of the United States, together with this Writ so that you have the same in the said Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 19th day of May, in the year of our Lord, 1911.

[SEAL.]

D. H. HART,
*Clerk of Circuit Court of the United States*
*for the Western District of Texas.*

Allowed:

W. M. KEY,
*Chief Justice Court of Civil Appeals*

Endorsed: Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 22, 1911. R. H. Connerly, Clerk.

226 *Bill of Costs Ct. Civ. Apps. Certified.*

No. 4613, Llano Co.

STATE OF TEXAS
vs.
R. H. DOWNMAN.

Reversed & Rendered 1/18/1911.

Certified Copy Bill of Costs.

| | |
|---|---|
| Filing Record | .50 |
| Docketing Cause | .50 |
| Appearances | 1.00 |
| Filing Briefs | .80 |
| Filing and Entering Motions | .35 |
| Orders | 2.00 |
| Filing 20 Extra Papers | 2.00 |
| Continuances | .20 |
| Judgments | 1.00 |
| Taxing Costs | .50 |
| Mandate | 1.50 |
| Recording Opinion | 15.60 |
| Certified Copy of Opinion | 10.40 |
| Certified Copy Bill of Costs | .75 |
| Cert. Copy Orders to Supreme Court | 2.00 |
| Notices | 7.50 |
| Copy of Motion | 1.50 |
| Issuing 1 Precept | 1.00 |
| Sheriff's Fees | 1.00 |
| Supreme Court Costs | 8.05 |
| Supreme Court Costs, certified copies application for writ of error and motion for rehearing | 24.50 |
| Transcript to U. S. Supreme Court | 115.00 |
| Total | $200.15 |

227 Clerk's Office, Court of Civil Appeals, Austin, Texas.

I, R. H. Connerly, Clerk of the Court of Civil Appeals, 3rd Supreme Judicial District of Texas do hereby certify that the foregoing 226 pages exclusive of Caption and Index, contain true and correct copies of all the proceedings had in the District Court of Llano County, in this court and in the Supreme Court of Texas, and that the three pages following are the original writ of error, citation in error and acceptance of service, in the case entitled in said Court

of Civil Appeals, The State of Texas, Appellant vs. R. H. Downman, Appellee, No. 4613, from the District Court of Llano County, Texas, as the same appear from the files of said cause in this court. Witness my hand and the seal of said court this the 12th day of June A. D. 1911.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk*.

228 Original.

*Writ of Error.*

UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the Honorables the Judges of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, Greeting:

Because, in the record and proceedings, as well as in the rendition of the judgment, of a plea which is in the said Court of Civil Appeals for the Third Supreme Judicial District of Texas, before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in said suit between R. H. Downman, plaintiff in error, and the State of Texas, defendant in error, which judgment reversed the judgment of the District Court of Llano County in favor of R. H. Downman, and rendered judgment in favor of the State of Texas against R. H. Downman, being cause No. 4613 in said court of Civil Appeals for the Third Supreme Judicial District of Texas, wherein was drawn in question the validity of an authority exercised under the State of Texas on the ground of its being repugnant to the constitution of the United States, and the decision was in favor of its validity; and wherein rights, titles, privileges and immunities were specially set up and claimed by plaintiff in error under the constitution of the United States, and the decision of said Court of Civil Appeals was against said titles, rights, privileges and immunities so specially set up and claimed; a manifest error hath happened to the great damage of R. H. Downman as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning same, to the Supreme Court of the United States, together with this Writ so that you have the same in the said Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States the 19th day of May, in the year of our Lord, 1911.

[Seal of the U. S. Circuit Court, Western Dist., Austin, Texas.]

D. H. HART,
*Clerk of the Circuit Court of the United States for the Western District of Texas.*

Allowed:
W. M. KEY,
*Chief Justice Court of Civil Appeals, Third Supreme Judicial District of Texas.*

[Endorsed:] Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, May 19, 1911. R. H. Connerly, Clerk. 15.

229 Original.

THE UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty (30) days from the date hereof pursuant to a writ of error filed in the clerk's office of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas wherein R. H. Downman is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice sould not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 20th day of May, in the year of our Lord, One Thousand Nine Hundred and eleven.

[The Seal of the U. S. Circuit Court, Western Dist., Austin, Texas.]

W. M. KEY,
*Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas.*

Attested with the seal of the United States Circuit Court for the Western District of Texas, this 20 day of May, 1911.

[The Seal of the U. S. Circuit Court, Western Dist., Austin, Texas.]

D. H. HART,
*Clerk of the Circuit Court of the United States for the Western District of Texas.*

Service accepted.

June 1, 1911.

O. B. COLQUITT, *Governor.*

JEWEL P. LIGHTFOOT,
*Attorney General.*

June 1st, 1911.

JAS. D. WALTHALL,
*Ass't Att'y Gen'l.*

[Endorsed:] Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas. May 22, 1911. R. H. Connerly, Clerk. 14.

230

No. —.

R. H. DOWNMAN, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

Cause Pending in the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

Whereas in the above styled and numbered cause a writ of error as been allowed to the Supreme Court of the United States;

Therefore, Llano County, acting herein by its county judge and its attorneys of record in this cause, hereby waives service of citation n error in said cause, and enters therein its appearance as fully and ith the same effect as if citation in error in said cause had been uly served on it.

Witness our hands at Llano, Texas, this 8th day or June, A. D. 911.

LLANO COUNTY,
By A. H. WILLBERN,
*Its County Judge.*
By SLATOR & OATMAN AND
KNIGHT STITH
*Its Attorneys of Record in said Cause.*

[Endorsed:] No. —. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Jun- 10, 1911. R. H. Connerly, Clerk. Gregory, Batts & Brooks, Lawyers, Austin, Texas.

Endorsed on cover: File No. 22,741. Texas Court of Civil Appeals, 3d Supreme Judicial District. Term No. 332. R. H. Downman, plaintiff in error, vs. The State of Texas. Filed June 17th, 11. File No. 22,741.

Supreme Court, U. S.
FILED.
NOV 30 1912
JAMES H. McKENNEY,
CLERK.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

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## No. ~~332~~ 43

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R. H. DOWNMAN, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF TEXAS, DEFENDANT IN ERROR.

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IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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## MOTION TO ADVANCE.

The defendant in error, the State of Texas, instituted this suit in the District Court of Llano County, Texas, against the plaintiff in error, R. H. Downman, to recover taxes levied upon certain mineral rights owned by him. The trial court rendered judgment in favor of the defendant, plaintiff in error in this court, but upon appeal to the Court of Civil Appeals for the Third District of

Texas that court reversed the judgment of the court below and rendered judgment for the State for the amount of taxes sued for. Plaintiff in error thereupon applied to the Supreme Court of Texas for a writ of error, which was denied. He then brought the case here by writ of error to the Texas Court of Civil Appeals.

This is a case of great public interest and seriously affects the revenues of the State of Texas, wherefore, acting through her attorney general, she moves the court to advance the case on the docket and set it down for hearing on some day convenient to the court during the October term, 1912.

Notice of this motion has been served upon opposing counsel.

JAMES D. WALTHALL,
*Attorney General,*
*Attorney for Defendant in Error.*

DECEMBER 2, 1912.

3

Office Supreme Court U. S.
FILED
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# No. 43.

IN THE

# Supreme Court of the United States of America.

R. H. DOWNMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

*In Error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.*

BRIEF FOR PLAINTIFF IN ERROR.

.....

.....

Counsel for Plaintiff in Error, R. H. Downman.

V. L. BROOKS,
Of Counsel.

Von Boeckmann-Jones Co., Printers, Austin, Texas.

IN THE

# Supreme Court of the United States of America.

R. H. DOWNMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

*In Error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.*

BRIEF FOR PLAINTIFF IN ERROR.

Defendant in error, the State of Texas, instituted this suit against plaintiff in error to recover taxes alleged to be due the State and to Llano county on certain interests in real property for the year 1907. The trial resulted in a judgment for plaintiff in error. The State of Texas appealed, and judgment was by the Court of Civil Appeals reversed and rendered in favor of the State; the Supreme Court of Texas refused a writ of error, and the presiding judge of the Court of Civil Appeals allowed a writ to this court.

The following statement of the pleading, evidence and findings will indicate the issues presented by the case. The petition of the State simply prayed for judgment for the taxes alleged to be due, and unless the answer of defendant presented a defense the State was entitled to judgment. The defendant answered as follows: (Record, p. 33 et seq.)

"Defendant alleges that after said lands had been rendered for taxes by their respective owners for the year 1907, and after said renditions had been accepted and entered of record in the manner provided by law by the tax assessor of Llano county, and after the tax assessments for said year had been duly reported by said assessor to the county commissioners court of said county to be equalized as the law directs, said court by an order of date July

12, 1907, directed that the assessor of taxes of Llano county should assess 'all minerals and mineral rights in, upon or attaching to any and all lands of Llano county' where it should be found by examination of the real estate transfer records of the county that said 'minerals and mineral rights were owned by a different person from the owner or owners of the surface estate,' and that said 'minerals and mineral rights' should in all such cases be assessed for taxes independent of the 'surface' estate.

"Defendant further alleges that the tax assessor of Llano county did in pursuance of said order, and on no other authority, thereupon enter and make for said court the tax assessments on which this suit is predicated. That in making said assessments he wrote upon the assessment records nothing to indicate that taxes were intended to be thereby assessed against any other or different interests in said lands for the year 1907 than the entire fee simple and absolute title in same; that having entered said assessments as above alleged, said tax assessor thereupon reported same to said commissioners court of Llano county. That said court thereupon, without hearing any evidence whatever showing or tending to show that said lands contained any minerals of any value whatever, or that the value of said lands were in any respect enhanced by the presence of minerals or mineral substances thereon, and that without any such evidence having been heard by the tax assessor, or other person, approved said assessments and ordered same to be entered upon the tax rolls. That, in pursuance of said order, said assessments were entered upon the unrendered rolls of said county; that at the head of said assessments were written the words 'Mineral Right Only,' and that said roll made up in the manner above alleged constitutes the sole basis for the claims alleged against defendant in the plaintiff's petition.

"Defendant further alleges that in attempting to separately assess for taxation 'minerals or mineral rights' in the lands mentioned in said petition, the officers of said county made no reduction whatever in the valuation at which said lands had been assessed for taxation against the holders or owners of fee simple titles. He further alleges that in assessing for taxation all of the other lands of said county for said year, in respect to which no right to prospect for, develop or sell minerals had been granted by the owners of the fee simple titles, said officers valued same at figures exactly similar to the valuations assessed against the owners of the fee simple titles of the lands mentioned in plaintiff's petition; although said other

lands were of the same character as those mentioned in plaintiff's petition; and although there existed just the same reasons for supposing that said other lands contained minerals or mineral substances capable of being mined and sold at a profit as there are for supposing or finding that the lands mentioned in plaintiff's petition are of that character.

"He further alleges that, because of the rule or system adopted as aforesaid by the tax assessor of said county for the valuation of land therein for the purposes of taxation for the year 1907, all taxable lands which are situated in said county, and on which the mineral privileges were retained by the owners of the fee, are valued at a different and lower rate for purposes of taxation than the other exactly similar lands in said county on which said mineral privileges have been conveyed to persons other than the owners of the fee. Because of these facts, he alleges that the tax assessments of said county for said year are unequal and ununiform, that they unjustly, arbitrarily and systematically discriminate against him, and all other persons who have mineral privileges in the lands of others in said county, and that they impose upon the latter class of persons greater burdens of taxation than upon any other class of persons owning similar rights of similar value in said county, and that for said reasons said tax assessments against him and against the other persons of the class to which he belongs are null and void, because to enforce them would result in the enforcement of an unequal and ununiform system of taxation, and in the taking of the property of this defendant and the property of all other individuals of the class to which he belongs without compensation and without due process of law, and would violate rights guaranteed to him by the Constitution of the State of Texas and the Constitution of the United States.

"Wherefore defendant says that the alleged tax assessments for taxes for the year 1907 on which plaintiff sues are void. * * *

"3. Because said assessments were made in pursuance of a general plan or system which was calculated to result in, and which has in fact resulted in, the double, unequal and ununiform assessment for taxation of all lands in Llano county in which the right to prospect for and sell the minerals is owned by persons other than the owners of the fee; and for that reason unjustly discriminate against this defendant and all other taxpayers of said county of the class to which he belongs."

The tax undertaken to be recovered affected more than fifty thousand acres of land. (Record, p. 2 et seq.)

The granting part of most of the instruments conferring "mineral rights" was in the following form: (Record, p. 66.)

"Have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said R. H. Downman of the Parish of Orleans in the State of Louisiana all metals, ores, granites, rocks, stones and other minerals, metallic and non-metallic, organic and inorganic, in place or severed from the earth which *might or could be worked for profit by underground excavations or open workings or both*, and the products of any and all such things and substances *now known to be, or hereafter found to be*, in or upon the hereinafter described lands, together with the right to enter upon same and search, dig and excavate for such things and substances, and the right to use and appropriate so much of the surface of such land as may be required for any roads, railroads, sidetracks and switches and the construction thereof on or across said land to be used in the transportation of persons and any freight or property whatsoever from or to any place wheresoever, and also the right to make and construct in, on and under said lands, tipples, shoots, shafts, drifts, levels, tunnels and other underground ways in which may be handled and transported anything whatsoever from or to any place wheresoever, whether in said land or elsewhere, and it is expressly agreed and understood that this conveyance passed the right to the use of so much of the surface of said land that may be required for the preliminary and exploration work and rights of way." (Tr., pp. 36-37.)

The statement made will render it unnecessary to consider any other part of the record except those parts showing the jurisdiction of this court and invoking its protection: (Answer, p. 36 of Record; motion for rehearing in Court of Civil Appeals, p. 111 of Record; application for writ of error to the Supreme Court of Texas, p. 149 of Record; petition for writ of error from this court, p. 151.)

The undisputed evidence and the unquestioned finding of the trial court, show that the State of Texas, through its taxing officers in Llano county, adopted for the year 1907 a system of taxation and of valuation for taxation which was intended to operate and did operate unequally, in violation not alone of the Texas State Constitution, but of the Constitution of the United States, in that said system was made applicable to tax payers of

a certain class and not applicable to other tax payers, there being no reason or basis for the classification. The adoption of the system has resulted in the taking of the property of plaintiff in error and all other persons in the arbitrarily created class without compensation, and without due process of law, and against the law of the land, and has deprived them of rights, privileges and immunities recognized in other citizens.

Broadly stated, the proposition involved is indicated by the following:

The taxing scheme provides that if the ownership of "mineral rights" and the other properties or qualities of the land are combined in one person, that person will belong to the class whose "mineral rights" will not be taxed but once; if the ownership of the "mineral rights" are in one person and the other properties or qualities of the land in other persons, the owners will belong to another class whose "mineral rights" will be taxed twice, once in the owner of the land as distinguished from the owner of the mineral rights, and once in the owner of the "mineral rights" as distinguished from the owner of the land.

If this were not what was involved in the scheme of taxation, and if this was not the principle now contended for by the State the fact that all of the lands mentioned in plaintiff's petition were assessed for taxation for the year 1907 against the persons who had conveyed the mineral rights to Downman, and the fact that said persons paid the taxes on said land for said year, would seem to be conclusive answer to the contention of the State, that it can again recover taxes for said year on any interest in said lands. As was said by the Supreme Court of Kentucky in Commonwealth vs. Gaines, 80 Ky., 189: "When the State once assesses property for a given year, and collects the taxes thereon, it can not thereafter reassess the same property for the same year in the name of another, even though the latter be the real owner, and collect the tax again."

Article 5062 Revised Statutes of Texas, provides: "Real property for the purpose of taxation shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements or other fixtures of whatsoever character thereon, and all rights and privileges belonging or in anywise appertaining thereto, and all *mines, minerals, quarries or fossils in or under the same.*

Article 5076 of the Revised Statutes prescribes how real property shall be rendered for taxation, and provides that the person

rendering same shall give (1) the name of the owner; (2) the abstract number; (3) the number of the survey; (4) the name of the original grantee and the number of the certificate; (5) the number of acres, and (6) the value of the land.

The tax renditions for the year 1907 by the grantors of Downman complied with all of the statutory requisites. Those renditions disclose no intention on the part of the grantors of Downman to exclude or except from their renditions any interests in the lands. The renditions as made were accepted by the tax officer of the county, and the tax rolls predicated thereon show that Downman's grantors were charged with taxes on their real estate in accordance with said renditions.

The evidence shows further without contradiction or dispute, that the grantors of Downman were assessed the full taxable value of their land, including the value of all minerals and mineral rights therein and that all such taxes were paid.

Upon appeal the State made the contention, "We do not think it will be presumed that said grantors of appellee rendered the entire interest in the real estate for the reason that the law does not require a person to render property not owned by him, but only requires him to render and pay taxes on property which he owns. Besides, if it is assumed that appellee's interests in the lands described in plaintiff's petition were taxable as against appellee on the first of January, 1907, we do not think appellee can complain in this case that the owners of the surface have assessed and have paid taxes upon a greater valuation than they should have done."

There is no room for "*presumption*" as to what interests in the lands were rendered by Downman's grantors. Those renditions were all in writing and *were in the form prescribed by statute for the rendition of all interests in the lands*, including the *mines, minerals, rocks and fossils* in, under or on same. The legal effect of those written instruments is not attacked by appellant on the ground of fraud, accident or mistake. If the renditions stood alone and unexplained, their language would require that construction to be given them which the trial judge adopted. But they are not unexplained by the parol evidence. That evidence clearly shows that the taxing officers accepted the renditions as meaning what by their language they purport to mean; and that, in pursuance of the construction so given the lands rendered were assessed and valued against Downman's grantors just as if no mineral rights therein had ever been conveyed to Downman, and that

the taxes so assessed have been fully paid. This conclusively shows that Downman's grantors did render for taxation for the year 1907 the interests in the lands which were subsequently assessed against him for that year; and that the taxes so assessed have already been paid by his grantors.

No question of presumption, no question of mistake arises, no question arises as to whether certain assessments or valuations were made. All that is involved is the system devised by the commissioners court of Llano to twice tax the lands of persons whose lands were to be differentiated from other lands only by the circumstance that the ownership of "mineral rights" was in one person and the other parts of the land in another.

The sole interest of the State is that its taxes be assessed and paid. They were assessed and paid, unless "mineral rights" may be twice taxed when segregated and only once taxed when not. For aught that appears in the record to the contrary, appellee's grantors may have made the renditions and paid the taxes by virtue of *an agreement* with appellee that they would do so. Or it may be that they construed their deeds to the appellee as vesting in him no *taxable interest in* the real estate until the discovery of something therein, the title to which would pass to appellee by the terms of the granting clauses of the instruments. Whether this is the correct construction or not is immaterial to the State if all its taxes have been paid; and all its taxes have been paid, unless plaintiff in error and other owners of "mineral rights" alone, together with their grantors owning the balance of the real estate as defined by the laws of Texas, constitute a class upon whom additional burdens of taxation may be imposed. Mr. Downman, plaintiff in error, it appears from the record is as to one tract of land in Llano county the owner both of the "mineral rights" and all other rights. As to this tract he belongs to the class who pay only once on "mineral rights." He is with one O. J. Bauman the owner of the mineral rights and all other rights in a number of tracts. As to these tracts he and Mr. Bauman belong to another class, whose "mineral rights" are taxed twice. Mr. Bauman has to pay on the "mineral rights" and Mr. Downman has also to pay on them. This class is created merely by the execution of an instrument which in no way affects the State, or the property, or any person except Mr. Downman and Mr. Bauman.

Prior to July 12, 1907, the appellee's grantors had rendered for taxation all of the lands mentioned in plaintiff's petition. The

renditions so made were unqualified and in exact conformity with the requirements of the statute governing the rendition of real estate for taxation where no separate estates have been created in same. The assessments made on said renditions fixed the value of the lands for purposes of taxation against appellee's grantor at figures exactly corresponding to the valuations placed on all similar lands in the county in which the surface and mineral rights had not been severed.

On July 12, 1907, the commissioners court of Llano county passed an order by the terms of which the tax assessor was directed to assess *those minerals and mineral rights in the county which were owned by persons who did not own the surface estate in the land on which such minerals, etc., were located.* The assessor obeyed the terms of this order literally. He ascertained, by reference to the deed records of the county, the tracts of land in which the mineral and surface estates had been severed. He assessed the minerals and mineral rights in these tracts, *and did not assess minerals or mineral rights in any other lands of the county,* notwithstanding the fact that "*said lands* (against which minerals and mineral rights were assessed) *do not differ so far as mineral indications are concerned from the lands in the county in general in which mineral rights have not been conveyed to third persons by the owners of the fee simple titles.*" (Finding of court, p. 54 Record.) "No developed mines exist, or existed on January 1, 1907, on any of the lands mentioned in plaintiff's petition; and no minerals of any character capable of being worked for profit, or having a value, are shown to have ever existed on any of said lands." (Finding of Court, p. 54, Record.) Neither the tax assessor nor the board of equalization made any reduction in the assessment against Downman's grantors after assessing against Downman the minerals and mineral rights in the lands; and neither authority heard or had, in assessing said minerals and mineral rights, any evidence that said lands contained minerals. The work of the assessor was approved and adopted by the board of equalization without change. The net result of the system adopted is that each tract of land in Llano county in which the mineral and surface estates had been severed was valued for taxation, for the year 1907, at fifty cents per acre more than any similar lands in the county in which both estates were owned by the same person. In other words, an arbitrary system has been adopted and uniformly applied by which all lands in the county in

which separate mineral estates have been created are taxed greater sums than are imposed upon the other lands of the county of exactly similar value and character, in which the surface and mineral estates are owned by the same person or persons.

There was no inquiry by any taxing officer as to what lands of the county contained valuable minerals. There was no attempt or desire to assess for taxation those minerals or mining rights of the county which are owned by persons who also own the "surface" estate in the lands on which such minerals are situated and to which such mining rights are attached. But on the contrary, the declared and systematic effort was to tax mineral rights in those tracts of land only where the ownership of such rights was severed from the ownership of the "surface" estate. Nothing can, under the terms of our Constitutions, justify such a system of taxation.

We concede the law to be that it is perfectly competent to sever the surface and mineral rights in any tract of land by conveyance or reservation, so as to put the ownership of the two estates in the same tract of land in different persons. We further concede, that, when the two estates in any particular tract have thus been severed, the "surface" estate is taxable against the person who owns that estate and the mineral right is taxable against the person who owns that right. But we also conceive the law to be that these two estates are equally taxable when they are owned by the same individual, and that a system of taxation which ignores this fact and which subjects to taxation mineral rights when owned by persons who do not own the "*surface*" estates and exempts from taxation similar rights when owned by persons who also own the surface estates, places an unwarranted and illegal burden on the former class of owners.

But it may be claimed that the mineral rights in other lands in the county were included in the assessments made against the owners of those lands—that, as the assessments made of those lands were unqualified, they included an assessment of the minerals. This is doubtless correct, theoretically. But the fact remains that all lands in the county in which the two estates had been severed were valued for purposes of taxation at a uniformly higher rate than the other lands in the county in which the two estates had not been severed. This fact renders this assessment at the higher valuation void because *systematic inequality in valuing property for taxation*

No. 42.

In the

# Supreme Court of the United States of America.

R. H. DOWNMAN, Plaintiff in Error,

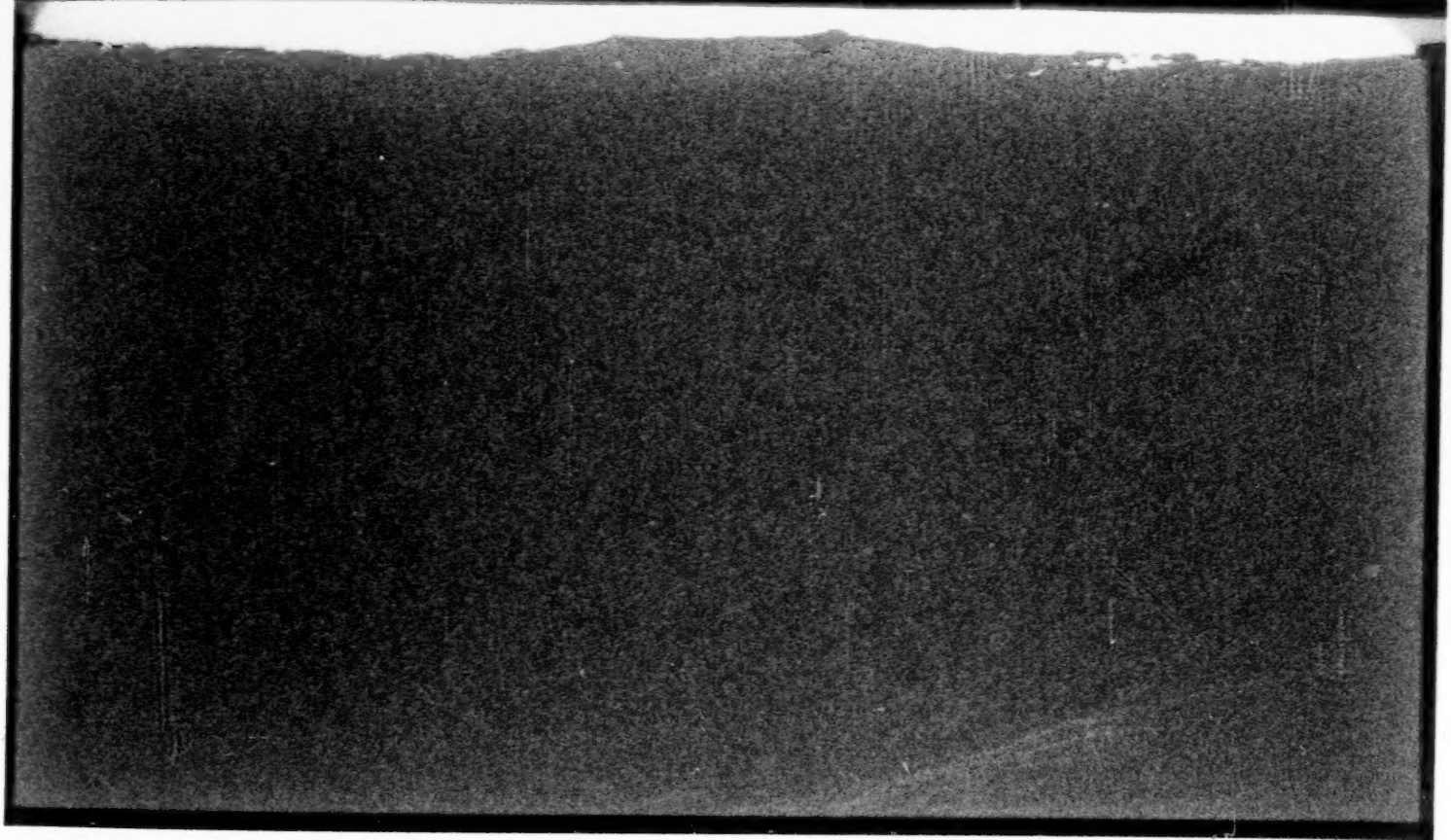
vs.

THE STATE OF TEXAS, Defendant in Error.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

BRIEF FOR DEFENDANT IN ERROR.


B. F. LOONEY,
Attorney General,
G. B. SHIDDEN,
Assistant Attorney General,
EARNEST STEEN,
County Attorney for Lipan County, Texas.
BLACKER & GRISHAM, Llano, Texas,
Attorneys for Defendant in Error.



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No. 332.

IN THE

# Supreme Court of the United States of America.

R. H. DOWNMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

## BRIEF FOR DEFENDANT IN ERROR.

### STATEMENT OF THE CASE.

With perhaps one exception, which is hereinafter noted, the statement of the case made by plaintiff in error, is substantially correct. Plaintiff in error's statement that the findings of the trial judge to the effect that in assessing the lands mentioned in plaintiff's petition against the grantors of plaintiff in error and in assessing for taxation against the owners of the fee simple titles other lands in the county, in which mineral rights had been conveyed to third persons, neither the tax assessor nor the board of equalization made any reduction in the valuation of the same on account of the fact that the mineral rights therein had been conveyed to third persons, had never been in any way attacked and had been acquiesced in, is not entirely correct. In addition to the findings of fact made by the trial court there were also filed by the court five conclusions of law. The fourth conclusion while called a conclusion of law, really contains findings of fact and is as follows:

"4. I conclude that the tax renditions for 1907 made by the grantors of the defendant as above stated and the tax assessments predicated thereon embraced all interests in the lands mentioned in plaintiff's petition, including 'all mines, minerals, quarries and fossils in or under same;' and that all taxes due the State and county on said lands for the year 1907 have been paid, including all taxes due on the minerals in or on said lands. I further conclude that when the State and county once assess the entire interests in property for a given year and collect the taxes thereon, they cannot thereafter re-assess the same property, or re-assess any interest therein, for the same year in the name of another and again collect taxes thereon for said year, even though the second assessment be against the real owner of the interests assessed." (Record, p. 56.)

To this conclusion, defendant in error filed in the trial court the following exception:

"Fourth. To the fourth conclusion of law the plaintiff excepts.

(1) Because it holds that the tax renditions for 1907 made by grantors of defendant embraced all interests in the lands mentioned in plaintiff's petition, when in truth and in fact said renditions at the time made, while not in the manner and form made, expressly excluding from said rendition the idea that all interests were rendered, were never approved by the commissioners' court as a full rendition of all interests in the land but on the contrary said commissioners' court ordered and directed the tax assessor of Llano county to render and assess separate and apart for taxes the said estate and rights that had been by said grantors conveyed to R. H. Downman, and said renditions as made by said grantors were not approved until the said assessments had been made by said assessor against the said R. H. Downman at which time the said commissioners' court of Llano county approved

the rendition as made by the assessor of Llano county of the estate and rights of R. H. Downman as conveyed to him by the stereotyped and six other deeds introduced in evidence in this case, and because it held that inasmuch as the grantors of R. H. Downman had rendered the land as above specified that the commissioners' court had no authority before the date of approving the said rendition of said grantors to instruct the tax assessor to assess separately the estate and rights in the land conveyed by the grantors to approve both assessments and require the payment of taxes by the grantors of R. H. Downman of the estate they owned in said land and also the payment by R. H. Downman, the defendant, of the taxes assessed against him for the estate and rights in the land owned by him." (Record, pp. 57-58.)

Defendant in error also filed among his assignments of error his fifth assignment, which raises the same objection to the court's fourth conclusion of law as that raised by the fourth exception which has been above quoted. (See Record, p. 60.) It appears, moreover, from the opinion of the Court of Civil Appeals in this case that the findings of fact of the trial judge were not acquiesced in by defendant in error who was appellant in said court. We find the following in the opinion of the Court of Civil Appeals:

"The authorities cited by appellee sustain abstractly the contention as made by him, and if his premise is correct, then there can be no question that the court was correct in the conclusions reached; because if, in fact, the grantors of Downman had by their voluntary assessment, which had been accepted and acted upon by the authorities, rendered for taxation not only their interest in the real estate mentioned in said conveyance, but that the same embraced the mineral rights of Downman as well, and the State had collected from said grantors the whole amount of taxes so due, then and in that event the State, through its officers could not re-assess

and collect an additional tax from Downman. But was this done? Appellee contends that it was, by reason of the fact that in the renditions of said real estate as given in by the grantors of Downman and accepted by the assessor, no mention was made in said assessments of the fact that they had previously conveyed their interest in the mineral rights underlying said lands, and there was nothing to indicate any such fact in any of said assessments. While this is true, and it would have been better for said grantors to have mentioned in said assessments that they only rendered the surface estate in said land, yet we find that when the commissioners' court met as a board of equalization, and these assessments of Downman's grantors were presented for their consideration, they, with knowledge of the fact that the mineral rights had been conveyed by said grantors, deferred action thereon, and directed the assessor, by an order spread upon their minutes, as hereinbefore set out, to assess for taxation all mineral rights in lands in said county where it appeared that the owners of the surface estate had conveyed the mineral rights therein. The record shows that the assessor literally followed the direction of the commissioners' court in this respect, and assessed as against Downman the mineral rights so conveyed to him by each of said grantors, which assessments were at the same time together with the assessments of the lands rendered by said grantors, submitted to said court for their consideration, and at the same time said court approved the assessments of said grantors as well as the assessments against Downman for his mineral rights in the tracts so conveyed to him by said grantors. This being true, it clearly appears that the commissioners' court did not consider the rendition of Downman's grantors as embracing the mineral rights in said lands; but, on the contrary, specially directed that the same should be assessed separate and apart from the interest of the grantors therein, and the same were so assessed, and the assessments so separately made were approved by them. For which reason,

it seems to us that the rule contended for by appellee does not apply but, on the contrary the contention of appellant is correct and should be sustained." (Record, pp. 106 and 107.)

This clearly shows that the question whether the value of the minerals was included in the valuation of the lands of the grantors of plaintiff in error, as approved by the commissioners' court, was made an issue in the Court of Civil Appeals and that this question of fact was decided by said court contrary to the findings of the trial court and in favor of the contention of appellant in that court that the minerals in the land were not included in the assessment made against the grantors of appellee in that court.

It is well to note also in the onset that the mineral rights owned by plaintiff in error were valued for taxation at 50 cents per acre, while they had been purchased by plaintiff in error for from $1.50 to $2.00 per acre, and that the lands were situated in that part of Llano county where it contains one of the best out-croppings of iron that is known to exist in Llano county and that the reputed out-croppings of the particular lands on which plaintiff in error owned the mineral rights, were as good or better than any other in the county. (See Record, p. 84; see opinion of Court of Civil Appeals, Record, p. 100; see testimony of plaintiff in error, Record, p. 86.)

Briefly stated, the sole contention made in this court by plaintiff in error against the judgment rendered against him for taxes on the mineral rights by him owned in the land in question, is that the full value of the lands, including the mineral rights, were rendered by the grantors of plaintiff in error and that the lands were so assessed against the grantors and the taxes so paid by the grantors, and that the assessment against plaintiff in error of the mineral rights owned by him in the same lands amounted to an unjust and unreasonable discrimination against plaintiff in error and his grantors and constituted him and his grantors an arbitrarily created class against whom taxes were assessed and collected twice on the same property, towit: the mineral rights in the

above quoted statute of Texas made conclusive and binding even on the Supreme Court of Texas when cases are reviewed by that court on writs of error granted to the Courts of Civil Appeals. Plaintiff in error in its brief disregards the findings of fact made by the Court of Civil Appeals and he appears to base his assumption that the mineral rights were included in the assessments of the grantors upon the fact that the tax renditions of said grantors were in regular form as required by the statute, and on the further fact that by Article 5069 of the Revised Statutes of Texas, real property for the purpose of taxation is defined to include the land itself, the improvements thereon, and mines and minerals in and under the land. But the renditions of the grantors do not show whether or not they included the minerals in the land, nor do they show what improvements, if any, they included. (See opinion of Court of Civil Appeals, Record, p. 107; see rendition of A. Bameau, Record, p. 81.) The statute does not require that these things be shown in the rendition, and in making an attack upon the assessment it is not to be presumed that the assessment was irregular or that it included an interest in property not owned by the person who made the rendition. Moreover, the contention of plaintiff in error that the mineral rights must have been included in the assessment of the grantors because the statutory definition of land for the purpose of taxation includes the minerals in the soil, as well as the surface and the improvements on the land, is entirely inconsistent with the admission of plaintiff in error in its brief that the surface and minerals in the land are susceptible of separate ownership and are subject to taxation separately against their respective owners. In addition to this the burden was upon plaintiff in error to establish by conclusive evidence his special defense to the collection of taxes that discrimination was used against him. Plaintiff in error did not offer any such conclusive evidence, but seems to have based his defense upon the presumption, or the assumption, that the mineral rights must have been included in the rendition made by the grantors, for the reason that such rendition did not show they were not included. It was the duty

of the commissioners' court of Llano county to pass upon the renditions of plaintiff in error and also upon those of his grantors. As shown by the findings of fact of the Court of Civil Appeals and by the evidence in the record above referred to, both sets of renditions were before the court at the same time. It is to be presumed that this court did its duty and it is not to be presumed that the court having both renditions before it, deliberately assessed the same property against different persons and thus doubly taxed it. (See Adams Express Company vs. Ohio, 169 U. S., 194; Globe Lumber Co. vs. Lockett (La.), 30 So., 902; Nolan vs. San Antonio Ranch Co., 81 Texas, 315.)

The conclusion of fact reached by the Court of Civil Appeals that the value of the minerals was not included in the assessment of the lands of plaintiff in error's grantors, is the only reasonable conclusion from the facts in evidence, and under the authorities above cited, this finding will not be disturbed by this court.

SECOND PROPOSITION.

*The Federal Constitution imposes no rigid rule of equality upon the States in the assessment and collection of their taxes, but leaves to the discretion and wisdom of the States a wide latitude; and the fact that the assessment and collection of taxes may in some instances operate unequally or may in some cases result in double taxation, does not render the imposition of such taxes a violation of the Federal Constitution.*

STATEMENT FROM THE RECORD.

In the opinion of the Court of Civil Appeals, we find the following with reference to the contention made by plaintiff in error that the tax against him was systematically discriminatory;

> "It is true that the tax assessor thereunder was directed to assess for taxes all mineral rights in said county by whomsoever held, where it appeared that the same had been severed by conveyance from the surface estate; still, this is not equivalent to a direction to the assessor to disregard in his assess-

ment those holding lands in which mineral rights existed, but had not been severed by conveyance to others. And it would seem to us that before the contention made by appellee could be upheld that it ought to be made to appear that the tax assessor of Llano county and the tax authorities thereof had declined to assess for taxes those owning such mineral lands. Nor do we think this is made manifest by a failure on the part of said assessor to reduce the value of the assessment against the lands of Downman's grantors. The other lands in said county were assessed for taxes against the owners as lands are usually assessed. Such an assessment unquestionably embraced the mineral rights in said lands, because the same were unqualified and included an assessment against the minerals, if any there be thereon, as well as against the surface estate. The order of the commissioners' court was not a direction to assess alone the mineral rights held by Downman, but it was general and embraced within it all persons holding and owning mineral rights where the same had been severed by the owner from the surface estate. We think this is an entirely different question from that determined in the case of Lively vs. the M. K. & T. Ry. Co., *supra*. In that case it was shown that the assessment of the intangible assets of the railway company was fixed at their full market value, while the value of all other property in the county was assessed at two-thirds of its actual value. Therefore, such corporation was denied the right of equal and uniform taxation secured to it by Section 1, Article 8 of the State Constitution, as well as the right to equal protection of the laws, as guaranteed by Section 1 of the 14th amendment of the Constitution of the United States, to our minds an entirely dissimilar proposition to the one here presented. Besides this, we are inclined to think that the evidence fails to show any such lack of uniformity and inequality or systematic discrimination as complained of by appellee. It does not appear from the evidence that the taxes assessed against the defendant were

> greater than those assessed against any other owner of mineral rights in Llano county. But the argument made, based on the facts, is that the owners of the surface estate, towit: Downman's grantors, were required to pay and did pay, the same amount of taxes upon their lands as other owners, who had not conveyed the mineral rights in their respective tracts. This latter feature, however, does not make the assessment in our judgment, contravene either the letter or the spirit of the constitutional provisions above quoted." (Record, pp. 108-109.)

This quotation very plainly shows that the Court of Civil Appeals found as a fact that there was no discrimination against plaintiff in error. Without setting out in full the testimony of the witness, Cone, tax assessor, which is found on pages 82 to 85 of the Record, it is enough to say that his evidence clearly shows that in making the assessment, there was no systematic discrimination against plaintiff in error, or his grantors, and that neither the testimony of this witness nor any other testimony in the record sustains the assumption of plaintiff in error that there was a studied and systematic difference in the valuation of the lands in the county where the surface and minerals were jointly owned and of the lands where the surface and minerals were separately owned. What the evidence of the witness, Cone, does show is, that at one time in pursuance of the order of the commissioners' court, he undertook to make and did make assessments of all mineral rights owned separately from the surface of the land.

AUTHORITIES.

Magoun vs. Illinois Trust Co., 170 U. S., 283.
Bell's Gap Railroad Co. vs. Penn., 134 U. S., 232.
Travelers Insurance Co. vs. Conn., 185 U. S., 364.
State Railroad Tax Cases, 92 U. S., 575, 612.
Davidson vs. New Orleans, 96 U. S., 97, 105.
Kelly vs. Pittsburgh, 104 U. S., 78.
Pittsburgh, etc., Railway Co. vs. Backus, 154 U. S., 421.

Adams Express Co. vs. Ohio, 165 U. S., 194, 229.
Paddell vs. City of New York, 211 U. S., 446.
Lick vs. Austin, 13 Calif., 590.
Nolan vs. San Antonio Ranch Co., 81 Texas, 315.
Cooley on Taxation, 3rd Ed., 391.

ARGUMENT.

If it were granted for the sake of argument that in assessing the taxes against lands in Llano county for the year 1907 some inequality was worked in the valuation of the lands and minerals where separately owned and their valuation where jointly owned, still this of itself could not be sufficient to render invalid the assessment against plaintiff in error. In speaking of the clause of the fourteenth amendment which forbids a State to deny to any citizen the equal protection of the laws, the Supreme Court of the United States, in the case of Magoun vs. Illinois Trust Co., *supra*, said:

> "It may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the State a wide latitude as far as interference by this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in Mobile county v. Kimball, 102 U. S., 691, that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive State legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of State laws is not necessarily an objection to their constitutional validity.'"

In the case of Kelly vs. Pittsburgh, *supra*, the Supreme Court said:

> "It is alleged, and probably with truth, that the estimate of the value of the land for taxation is very greatly in excess of its true value. Whether this be true or not we cannot here inquire. We have so often decided that we cannot review

and correct the errors and mistakes of the State tribunals on that subject, that it is only necessary to refer to those decisions without a restatement of the argument on which they rest."

In the case of Pittsburgh, etc. Railway Co. vs. Backus, *supra*, we find the following:

"A comparison of the assessment placed by the board upon the property of this plaintiff with that placed by it upon other roads or portions of roads within the State, is immaterial, unless coupled with an offer to show an identity in value."

In the opinion in Adams Express Company vs. Ohio, *supra*, we find the following:

"We have said nothing in relation to the contention that these valuations were excessive. The method of appraisement prescribed by the law was pursued and there were no specific charges of fraud. The general rule is well settled that 'whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts it cannot be overthrown by evidence going only to show that the fact was otherwise than as so found and determined.'"

While it may possibly have been true (though the evidence does not show it) that if a careful comparison of all the assessments of lands in Idaho county had been made, classifying the lands with regard to their identity in value, it would have been found that the combined valuations of the surface and mineral rights where separately owned exceeded the valuations of the lands where the surface and mineral rights were owned by the same person, this would not have amounted to such discrimination against plaintiff in error and his grantors and those similarly situated, as to render the taxation of their property invalid. It is well settled that the

States, for purposes of taxation, may divide persons and property into classes, and that the fact that an inequality results from such classification will not invalidate the taxation. As said by Justice Brewer in the case of Michigan Central Railway v. Powers, 201 U. S., 245:

> "There is no general supervision on the part of the Nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the Circuit Court in this case (p. 232):
>
> " 'There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the fourteenth amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways, nor to compel the States to adopt an ironclad rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice.' "

See also Pacific Express Co. vs. Seibert, 142 U. S., 339.
Metropolitan State Railway Co. vs. New York, 199 U. S., 1,16.

The record in this case clearly shows that no discrimination was made against the plaintiff in error and that at the same time as his mineral rights were assessed, the mineral rights of all others in the county where the mineral rights were separately owned were uniformly assessed, and plaintiff in error does not contend that the valuation placed upon his mineral rights was excessive or that it was any greater than that placed upon the mineral rights of other persons in the county. The testimony of plaintiff in error shows that he bought his mineral rights for the reason

case, 'is as ample as to tax once.' We make out, therefore, no conclusive case against a tax, when we show that it reaches twice the same property for the same purpose. This may have been intended, and in many cases, at least, is admissible." (Cooley on Taxation, 3rd Ed., p. 391.)

In the case of Paddell vs. New York (211 U. S., 146) it is held that land subject to a mortgage may be taxed at its full value without deduction of the mortgage debt from the valuation, either of the land or of the owner's personal property, notwithstanding the due process clause of the fourteenth amendment. Similarly, the Supreme Court of California, in the case of Lick vs. Austin, (43 Calif., 596), in which a mortgagor contended that taxation of his land at its full value amounted to double taxation, held that the land was nevertheless taxable against the mortgagor at its full value.

The execution of a mortgage against land in reality creates two separate interests in the land just as the execution of the deeds conveying the mineral rights to plaintiff in error created two separate interests in the land. When a mortgagor is taxed on the full value of the land and the mortagee on the value of the mortgage debt, there is in reality double taxation, but the Supreme Court of the United States and the Supreme Court of California and the courts of other States in the Union have held that such double taxation does not violate the Federal Constitution. Plaintiff in error argues that he and his grantors constitute one class and that the owners of lands in Llano county who have not disposed of their mineral rights constitute another class, and that as to him and his grantors, there is double taxation of the mineral rights with single taxation as to the owners of the lands in Llano county who have not parted with their mineral rights. It may as well be argued that a mortgagor of land and his mortgagee constitute one class and that land owners who have not mortgaged their land constitute another class and that by reason of taxing the land at its full value and the mortgage debt at its full value,

In the case of Globe Lumber Company vs. Lockett, *supra*, the lumber company in order to avoid the payment of taxes on standing timber which they owned on land which belonged to another, contended that the value of the timber was included in the assessment of the land and that for this reason the company would be deprived of its property without due process of law and that it would be double taxation if it were compelled to pay taxes upon the timber. The court held that the timber was taxable separately from the land and being owned by the lumber company was taxable against it, and that the company should in any event pay the taxes assessed against the timber which it owned, saying in the opinion:

> "Assessing the land to one man and the timber standing upon it to another who has bought it (the timber) is not double taxation. In such case in the absence of proof to the contrary it is assumed that the land as land only, not taking the trees into consideration, is assessed at its true value and that the timber is assessed at its true value independent of the land upon which it stands. Besides, if the plaintiff company is called upon to pay taxes only upon the timber at its true value, ascertained without regard to the land, it is without interest to complain that the owner of the land is required to pay the taxes assessed against the latter itself."

In the case of Lick vs. Austin, 13 Calif., 599, a mortgagor, to avoid the payment of taxes on the full value of his land, made the contention that since the mortgagee was taxed on the mortgage debt, that taxation of the land at its full value amounted to double taxation and was invalid. The court in that case said:

> "If taxes on the mortgages were paid by the mortgagees, the mortgagors cannot complain that their land was subject to double taxation. * * * It being the duty of the mortgagee to pay the taxes assessed on the mortgage debt, the mortgagor when assessed for the land has no legal cause of complaint that the mortgagee has paid or is liable for the payment of the taxes on the mortgage debt."

In the case at bar if it were granted that the facts are as plaintiff in error sees them, that is, that the grantors of plaintiff in error were taxed as well for the value of the mineral rights as for the value of the surface, this still would not be a matter of which plaintiff in error could complain, as he is only paying taxes upon the fair value of taxable property which he owns.

The last paragraph of the opinion in this case written by Justice Rice of the Court of Civil Appeals in Texas, and which has already been quoted in this brief, is a logical and complete answer to the contention of plaintiff in error that the tax against him was discriminatory. The judgment of the Court of Civil Appeals works the only rightful conclusion of the suit. It merely enforces the collection of a legal tax justly due the State of Texas.

Defendant in error submits that the essential fact, upon which is based the argument of plaintiff in error in his brief, has been shown not to exist and it has further been shown that if this essential fact did exist, plaintiff in error has suffered no legal injury.

Wherefore, defendant in error respectfully prays that the judgment of the Court of Civil Appeals of the State of Texas be in all things affirmed.

Respectfully submitted,

B. F. Looney,
Attorney General,
G. B. Smedley,
Assistant Attorney General,
Knight Stith,
County Attorney for Llano County, Texas,
Slator & Oatman, Llano, Texas,
Attorneys for Defendant in Error.

If his mineral rights are not over-assessed it is no defense that the surface estate may be over-assessed.
134 S. W. Rep. 787, affirmed.

THE facts, which involve the validity of an assessment for taxation of mineral rights on lands in Texas which had already been assessed for taxation to the owner of the fee, are stated in the opinion.

*Mr. Robert L. Batts* and *Mr. V. L. Brooks* for plaintiff in error.

*Mr. B. F. Looney*, Attorney General of the State of Texas, *Mr. G. B. Smedley* and *Mr. Knight Stith* for defendant in error.

MR. JUSTICE LAMAR delivered the opinion of the court.

The State of Texas brought suit against Downman to collect taxes on "mineral rights" owned by him in 50,000 acres of land in Llano County. In his answer he contended that he was not liable because the mineral rights were not real estate but mere licenses to work and develop mines in the future; that if real estate they had already been returned by the owners of the surface and, as the latter had already paid taxes on the land, no additional sum could be collected from him. Further, he claimed that the assessments were void as being an unlawful discrimination against the class of persons who, like himself, owned mineral rights separate from the surface estate.

On the trial it appeared that there was no mining in the county, but in many sections there were signs indicating the existence of ore. Prior to 1907 there had been no assessment of mineral either to the owner of the surface or to persons to whom the mineral right had been separately conveyed. In that year the tax-books were made up

as usual, grazing and agricultural lands being assessed at from $2 to $3 per acre. The tax-books were then forwarded to the County Commissioners for equalization of values. Acting in pursuance of instructions from the Comptroller, the Commissioners made order directing the County Taxing Officer to assess mineral rights where they were owned by persons other than the owners of the surface estate. He thereupon examined the public records and secured the names of the grantees in all deeds which conveyed such rights. Without further investigation as to the existence or value of ore, he assessed the owner on the basis of 50 cents per acre, entering the tax in the column headed "Mineral Rights Only." No deduction was made from the amount already entered against the owner of the land proper. The books, with both classes of assessments appearing thereon, were then finally approved and, in due course, the surface owners paid the taxes assessed against them on the land. Downman, for the reasons already stated, refused to pay the sum demanded of him as taxes on mineral rights in the 50,000 acres. His defense was sustained by the District Judge, who held that when the surface owners returned real estate that included every interest connected with the land and consequently Downman could not be held for an additional tax on property or value which had already been assessed to the owner of the surface. The Court of Civil Appeals recognized that if the owner of the land in paying his taxes had, in fact, paid on the mineral rights also, Downman could not be held liable in the present suit. But the judgment of the District Court was reversed for the reason that in approving the books having two assessments—one against land and one against mineral rights in the same tract—the Commissioner had recognized the existence of two separate interests in the same property belonging to two different owners. The Supreme Court of the State declined to interfere and the case was brought here by

writ of error in which Downman renews his attack on the validity of the assessment. He contends that mineral rights when belonging to the owner of the surface were not included in the assessment, but were taxed as soon as they were sold; that such "a tax was discriminatory against owners who, like appellant, own mineral rights in lands, the surface estate of which was owned by others," and that such discriminatory assessment imposes upon the latter an unlawful burden of taxation and takes his and their property without due process of law.

The Texas court recognized that if a mineral right was not an estate, but a mere license to enter and work in the future it was not taxable. It held, however, that the deeds conveying ore, stone and minerals were grants of property and conveyed to Downman title to the mineral with the right to work the same. This title and right was held to be real estate and taxable as such. On this writ of error from the state court we are not concerned with that construction of the statute, nor with the regularity of the method by which the taxes were assessed, nor with the fairness of the valuation. The only Federal question arises out of the contention that there was a discrimination against Downman in taxing him on mineral rights when the same were not taxed if they belonged to the owner of the surface estate. In effect he claims that taxability of mineral rights was made to depend not on value, but on ownership, being taxable after they had been conveyed but not taxable as long as they remained the property of the holder of the surface. The record, however, does not support this position, for it does not appear that the landowner was consciously relieved of taxation on mineral rights known to exist. If the mineral actually added to the value, the law required that it should be represented in the assessment of the land. But if the owner and the Assessor did not know of the existence of ore, there was no injustice nor known discrimination

in assessing it merely as grazing land. When however, an actual sale of the mineral rights in a particular tract was made, and the deed recorded, a new value was brought to light. There was then no reason why the taxing officers should not accept the action of the buyer in paying therefor $1.50 per acre as evidence that the mineral right had a separate value. This right being real estate was taxable, but if assessed against the owner of the surface, the result would have been that he would have had to pay on an interest in the land with which he had absolutely parted. Usually real estate is taxed as a unit; but as different elements of the land are capable of being severed and separately owned, the statute may authorize a separate assessment against the owners of the severed parts. Accordingly if the title has been severed land may be taxed to one, timber to another, or land to one and coal to another. The state court held that such was the law of Texas, in view of the general language of the statute defining real estate as including not only the land itself but the buildings on the land and the minerals under the land. There was, therefore, nothing discriminatory in assessing Downman as owner of the mineral right which had been sold to him and separately assessing the owner of the surface with what remained. That the two owners were thus separately assessed, each on his own property, appears from the fact that both values were separately entered upon the tax-books—Downman's mineral rights, for which he paid $1.50 an acre, being assessed at 50 cents an acre and the surface estate at from $2 to $3 per acre. If the latter was over-assessed it affords Downman no defense. The record discloses no violation of a Federal right and the judgment is

*Affirmed.*